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ANALYZING OUTCOMES AND PUNISHMENTS AWARDED AT COURTS MARTIAL IN THE USMC FOR SYSTEMIC DIFFERENCES

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13. ABSTRACT (maximum 200 words)

Results of all special and general courts-martial in the Marine Corps from January 2017 to August 2020 were analyzed for systemic differences in terms of trial outcomes and punishments. Trial outcomes were obtained from the Marine Corps' legal database and combined with demographic and service data obtained from the Total Force Data Warehouse. Multiple regression analysis was performed with trial outcomes and various categories of punishments awarded utilized as outcome variables. Racial/ethnic, demographic, and service information were utilized as explanatory and control variables. The race/ethnicity of trial personnel, to include trial counsel, defense counsel, and military judge, were also analyzed to determine whether they impacted the outcome of the trial, or whether there were any effects on the interaction between the race/ethnicity of the accused and trial personnel. Outcomes were also analyzed within certain categories of misconduct, specifically trials where Marines were charged with misconduct concerning drug use, sexual misconduct, and the general article. The population representation of the Marine Corps was compared to the demographic makeup of the court-martial sample populations to identify instances of over- and under-representation. Significant over-representation of Black Marines and under-representation of White Marines was found in the courts-martial population. Trial outcomes and punishments were generally not influenced by any racial/ethnic factors.

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ANALYZING OUTCOMES AND PUNISHMENTS AWARDED AT COURTS
MARTIAL IN THE USMC FOR SYSTEMIC DIFFERENCES

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Submitted in partial fulfillment of the
requirements for the degree of

MASTER OF SCIENCE IN MANAGEMENT

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Results of all special and general courts-martial in the Marine Corps from January 2017 to August 2020 were analyzed for systemic differences in terms of trial outcomes and punishments. Trial outcomes were obtained from the Marine Corps' legal database and combined with demographic and service data obtained from the Total Force Data Warehouse. Multiple regression analysis was performed with trial outcomes and various categories of punishments awarded utilized as outcome variables. Racial/ethnic, demographic, and service information were utilized as explanatory and control variables. The race/ethnicity of trial personnel, to include trial counsel, defense counsel, and military judge, were also analyzed to determine whether they impacted the outcome of the trial, or whether there were any effects on the interaction between the race/ethnicity of the accused and trial personnel. Outcomes were also analyzed within certain categories of misconduct, specifically trials where Marines were charged with misconduct concerning drug use, sexual misconduct, and the general article. The population representation of the Marine Corps was compared to the demographic makeup of the court-martial sample populations to identify instances of over- and under-representation. Significant over-representation of Black Marines and under-representation of White Marines was found in the courts-martial population. Trial outcomes and punishments were generally not influenced by any racial/ethnic factors.

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LIST OF ACRONYMS AND ABBREVIATIONS

AFQT	Armed Forces Qualification Test
AWOL	away without leave
CMS-LA	Case Management System – Legal
EDIPI	electronic data interface personal identifier
GAO	Government Accountability Office
GCM	general courts-martial
GCT	General Classification Test
JAD	Judge Advocate Division
M&RA	Manpower and Reserve Affairs
MCM	Manual for Courts-Martial
MCTFS	Marine Corps Total Force System
MOS	military occupational specialty
NJP	non-judicial punishment
OUSD	Office of the Under Secretary of Defense
Pop Rep	Population Representation in the Military Services Report
SCM	summary courts-martial
SPCM	special courts-martial
TFDW	Total Force Data Warehouse
UCMJ	Uniform Code of Military Justice

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EXECUTIVE SUMMARY

The presumption within the military justice system is that all individuals are treated with equity. This presumption applies at every step in the military justice process and should not vary according to any individual characteristic or arbitrary factor, including race and ethnicity. Since the service was desegregated in 1948, there have been various efforts across the Department of Defense (DoD) to acknowledge and address instances of inequity within the military justice system, challenging this presumption. In 2019, a study by the Government Accountability Office (GAO) showed that the rates in which minority service-members experience investigation and courts-martial were disproportionate across all services compared to non-minority members. Decades prior in 1972, the DoD commissioned a Task Force to analyze the administration of military justice within the Armed Forces, specifically how Black and Hispanic service-members experience military justice compared to their White counterparts. The Task Force uncovered many instances of systemic discrimination within the justice system, and made the following statement:

> The military does not stand apart from the society it serves and is not immune from the forces at work in society. As long as there is racial discrimination in American society—and the Task Force believes this has been proven and demonstrated beyond a doubt—there will be racial discrimination in the military. (Department of Defense, 1972)

This is an enduring struggle within the military and mirrors the fight against discrimination and systemic bias across greater society.

I analyzed the trial outcomes, punishment severities, and population representation proportions of all special and general courts-martial within the Marine Corps from January 2017 to August 2020. I attempted to determine if racial or ethnic characteristics influenced an individual's likelihood of conviction or punishment severity. I also analyzed these effects within certain categories of misconduct, within judge versus jury trials, and further attempted to identify any effect from the interaction of the race/ethnicity of the accused and military justice personnel. Initially, I analyzed the population representation of individuals comprising the cohort of those court-martialed within my

sample timeframe. I determined that Black Marines were significantly and consistently over-represented in the sample relative to their service proportion. White Marines were similarly under-represented, and males were slightly over-represented compared to their service proportion. Figure ES-1 details the comparison between service representation and courts-martial sample representation for each subgroup for 2017 and 2018.
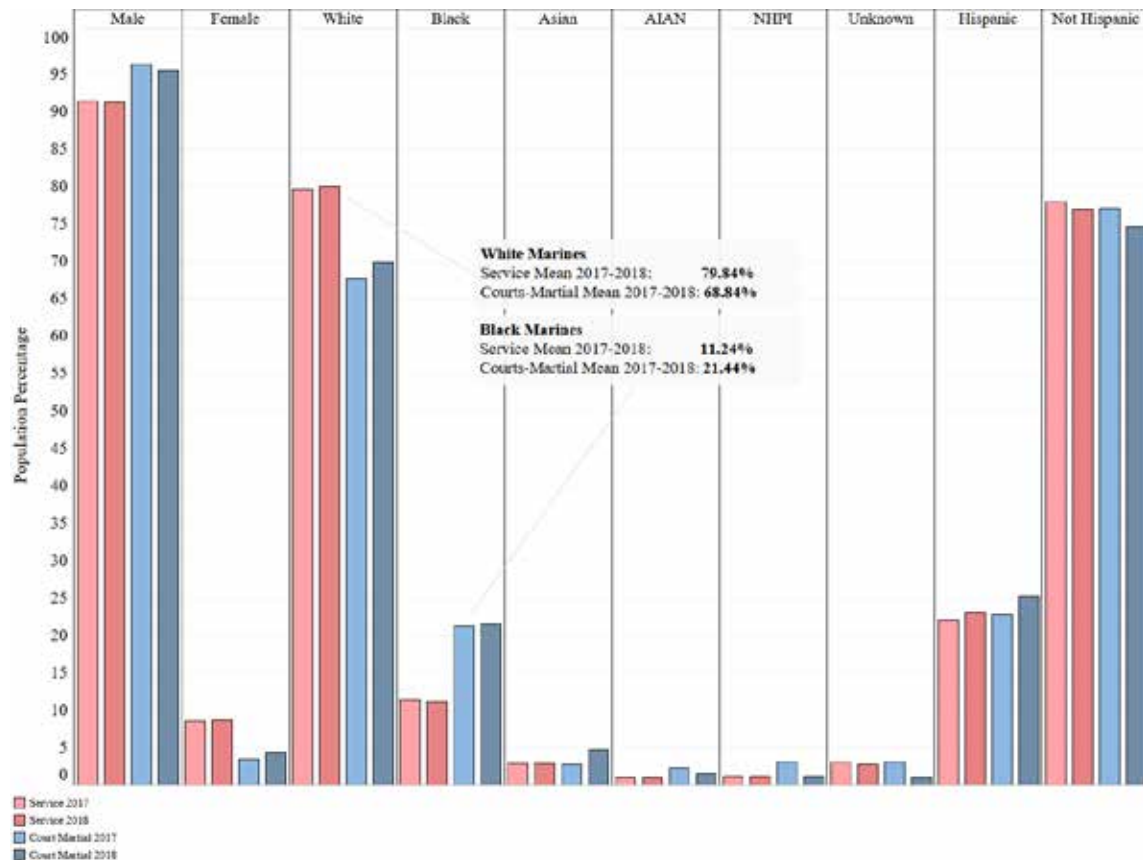
Figure ES-1.   2017–2018 Active Enlisted Service and Courts-Martial Cohort Population Representation Comparison. Source: OUSD (2017, 2018).

Within my regression analysis, I did not determine there were broad differences in terms of trial outcomes and punishments based on race/ethnicity with few exceptions. I determined that individuals with a racial category of "Other" (Native Hawaiians, Pacific Islanders, American Indian, and Alaskan Natives, and any other ethnicity not Hispanic) had a higher conviction rate overall, and were more likely to face conviction when other

factors were controlled for, but the sample size for those categorized as "Other" is small relative to the overall sample (31 out of 910), and a greater number of individuals should be analyzed prior to making a definitive conclusion regarding systemic differences for that subset.

I did not note any differences based on the accused's race/ethnicity in trial outcomes or punishment severities for specific categories of misconduct, judge versus jury trials, or in instances when the accused and military justice practitioners were the same race/ethnicity. I did note that Hispanic males were more likely to receive longer confinement sentences given a conviction at trial. Again, this warrants further analysis, as a host of different factors contribute to the adjudged length of confinement, and I was not able to sufficiently control for other factors to determine if this was an instance of systemic bias or due to other factors.

At the onset, it appears that a lack of significant predictors for conviction or punishment severity within the regression models is evidence against bias, but we must look at the results in context of the population representation proportions. Black Marines are over-represented by nearly double their service proportion. To claim that systemic bias does not exist in trial outcomes, a significantly lesser conviction for Black Marines would be required to compensate for this over-representation. The systemic mechanism that is causing this over-representation is unclear, but even with equitable treatment in terms of trial outcomes and punishments, we are still convicting and punishing Black Marines at a rate higher than other races/ethnicities owing to this over-representation.

Recommendation

I recommend investigating any correlation between lack of minority representation in the officer ranks and leadership positions and instances of disciplinary actions taken against minority service-members. It would be beneficial to determine if units without minority representation in senior leadership positions send more minorities to courts-martial compared to those with minority representation. I recommend a uniform method for recording race/ethnicity across all service components to facilitate cross-service analysis. Additionally, I recommend the Marine Corps' trial-record database

(CMS-LA, or Wolverine) interface with the Marine Corps Total Force System in order to make demographic data more reliably and accurately a part of the trial record and facilitate rapid analysis. Lastly, I recommend continued study, not just for the disparities noted within this paper, but for the sake of continued vigilance and awareness of the systemic mechanisms that influence all of our decisions. If we are aware that bias exists and that our own decision-making processes are susceptible, we can reduce the influence of systemic bias and make strides forward on the journey towards equality, fairness, and justice.

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Many thanks to Lieutenant Colonel Adam King, Branch Head, Military Justice, Judge Advocate Division, for providing the data and contextual foundation for this research. Additional thanks to Majors Ryan Lipton, John Spalding, and James King.

Lastly, I express my gratitude to our young service members. May your leadership guide you always with fairness, respect, and equity, and never cease to acknowledge your commitment to serve and willingness to sacrifice.

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I.   INTRODUCTION

Service in the United States Military is a diverse experience; the recruiting entities from each branch are encouraged to draw from all races, ethnicities, and social classes, with the objective of fielding the service with a heterogeneous population reflective of American society (Department of Defense, 2012). In 2009, the National Defense Authorization Act enacted the Military Leadership Diversity Commission that evaluated this objective and the greater cultural climate of the military in relation to inclusion and diversity (Military Leadership Diversity Commission, 2011). The commission found that many challenges and obstacles exist in the way of a thoroughly diverse force, with an underrepresentation of communities of color and women in senior ranks and leadership positions relative to the demographic fiber of the total force. Other recent studies have shown that some of the groups that are under-represented in higher ranks and leadership positions are over-represented in instances of non-judicial punishment, courts-martial, and administrative separation (Government Accountability Office, 2019). These disparities highlight the necessity to act, as noted by the commission, with recommendations including a call for creating a more inclusive environment and finding effective ways to address the military cultural issues that create impediments to advancement and dis-incentivize superior performance and continued service (MLDC, 2011).

The moral obligation to all service-members is fairness, impartiality, and an equal chance for every Marine, Sailor, Soldier, Airman, and Coast Guardsman to perform to the best of their ability, and for those individuals to be competitively considered for promotion and special programs irrespective of any demographic characteristic. General Mark Milley, Chairmen of the Joint Chiefs of Staff, stated the following during congressional testimony in July of 2020:

> Equality and opportunity are matters of military readiness…We must thoroughly examine our institution and ensure it is a place where all Americans see themselves represented and have equal opportunity to succeed, especially in leadership positions. (Department of Defense Authorities and Roles, 2020)

This moral obligation for fairness, impartiality, and equity extends to the military justice system, with the expectation that individual characteristics will not play a role in a service member's chances of facing discipline, or the outcome of their trial and severity of punishment should they be brought to court-martial. Deficiencies in this area may influence the relationship between the racial and ethnic disparities within the military justice system and under-representation of minorities in higher ranks and leadership positions. Systemic bias can influence the way minority service-members face the military justice system, and the same bias may influence the outcomes of promotion and selection boards, job placement at accession, chances for combat deployment, and a host of other areas of a service member's military experience (Armey, Berck, & Lipow, 2019). The perception that minorities may face discriminatory practices could potentially influence their decision to remain in the service, compete for leadership positions, and perform to the best of their ability, highlighting the necessity to study this topic and remain vigilant against its presence within the service.

A.   PURPOSE

Myriad studies have shown that minority service-members are more likely to face discipline and also less likely to fill the ranks of officer and leadership positions (DoD, 1972; Christensen & Tsilker, 2017). Whether causation exists between the increased likelihood for discipline and the racial/ethnic disparities within the leadership ranks is unclear. These compelling inconsistencies are justification enough for the continued study and research into military diversity, prejudice, and bias, and how they can impact our military culture. The study of these topics builds awareness, and awareness begets vigilance against the factors that contribute to bias, including actions blatant and subtle, conscious and unconscious, intentional and systemic. Awareness and vigilance are a continuous process, and we must consistently analyze the service for indications that policies to combat discrimination are effective, whether our collective efforts are working, or if we are regressing. A single study is an imprint in time, but our actions are a journey, and sustained study is required to provide indications of progress or challenges.

B.   SCOPE AND METHODOLOGY

This study focusses on the Marine Corps, and more specifically on how racial and ethnic characteristics impact trial outcomes for special and general courts martial, the severity of punishments awarded when the accused is found guilty, and whether these findings vary according to category of misconduct. My research seeks to answer the following questions:

- Between January 2017 and August 2020, has the Marine Corps demonstrated equity in trial outcomes for special and general courts-martial, without regard for race or ethnicity?

- Are there any systemic differences when examining trial outcomes for cases featuring charges within specific Uniform Code of Military Justice (UCMJ) articles?

- Does the race/ethnicity of the trial counsel, defense counsel, or military judge have an influence on conviction rate or punishment awarded for the accused?

- Are there disparities between the racial and ethnic population representations between the Marine Corps at large and those court-martialed in the sampled years?

My scope of analysis is all special and general courts-martial conducted in the Marine Corps from January 2017 to August 2020. Evidence exists in multiple studies that trial outcomes in terms of conviction and punishments may not be completely impartial, and that various demographic factors, race/ethnicity, and gender specifically, may also influence whether an individual is convicted, and the severity of their punishment if convicted. My expectation, based on my literature review of these studies, is that there is likely over-representation of minorities in the courts-martial population relative to the Marine Corps at large, and that outcomes and punishments may be impacted by race/ethnic and other demographic factors.

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Further, I attempted to determine if the racial characteristics of the trial counsel, defense counsel, military judge, and any interaction with the racial/ethnic characteristics of the accused influence the outcome of trial similarly. Hereafter, whenever I refer to the trial counsel, defense counsel, and military judge collectively, I will simply refer to them as military justice practitioners.

Equity should stand no matter the category or severity of the alleged misconduct. As a part of this study, I isolated instances of misconduct wherein the accused was charged with specific UCMJ articles to determine if certain categories of misconduct differ than others in terms of parity.

One item that would provide additional insight to the analysis is the demographic characteristics of the alleged victim, especially in cases that involve sexual misconduct. For multiple procedural, administrative, and privacy issues, this information was not able to be gathered for this study. It is imperative to protect the identity of victims of sexual assault, but anonymously obtaining victim demographic data may be beneficial for future studies.

C.   RESULTS AND FINDINGS

I found that generally, no single race/ethnicity was more likely to be convicted at courts-martial or face more severe punishments. I did find significant over-representation of Black Marines within the population of those court-martialed between 2017–2020 relative to their service population representation, and significant under-representation of White Marines within the same category. Black Marines who were the subject of courts-martial were also more likely than other races to have been the subject of non-judicial punishment. The racial/ethnic divide between the court-martial population and military justice practitioners was stark, with minority accused much less likely to be represented by minority counsel than White counsel.

Even with fairly equitable conviction rates and punishment severities regardless of race/ethnicity, Black Marines were convicted and punished at courts-martial at a rate

higher than other races across the Marine Corps, owing to over-representation within the courts-martial population.

Marines with a race categorized under "Other" did show an increased likelihood for conviction and an increase for some punishment severities, but the small number of Marines belonging to this category relative to the overall population is cause for further investigation rather than evidence for systemic bias. Hispanic males and males in general also were more likely to experience longer incarceration rates. Similarly, this is cause for further investigation and research due to myriad factors that influence the adjudged confinement length, and lack of sufficient controls within my data to determine if this is a function of race/ethnicity, or some other factor.

D.   APPROACH TO RESEARCH

I utilized the reports of courts-martial to determine the race/ethnic population representations within the cohort of all those accused at courts-martial during the sample years. Dividing the quantity of each individual race/ethnic subgroup by the quantity of total courts-martial yielded population representations within this dataset. These figures were grouped by calendar year and compared to the Marine Corps-wide race/ethnic population representation figures for years 2017 and 2018—the most recently available population representation statistics compiled by the Office of the Under Secretary of Defense – Personnel and Readiness (Office of the Under Secretary of Defense, 2017, 2018). This demonstrated any disparities between the two sub-groups. In a perfectly equitable scenario, we would expect the percentages to align within a reasonable margin. Establishing any over or under representation among race/ethnic categories provides context to the next phase of my analysis, which is likelihood of conviction and severity of punishment as a function of individual race/ethnicity, with controls for demographics and service characteristics.

Utilizing conviction and/or severity of punishment as outcome variables, I performed ordinary least-squares regressions for outcomes associated with conviction and severity of punishment. My main explanatory variables are the race/ethnicity of the accused, their trial and defense counsel, and the military judge associated with the trial. I

utilized a variety of demographic and service variables as controls to isolate the regression effects to race/ethnic characteristics. The results are displayed in tables and graphs, with statistically significant outcomes highlighted. I performed these same regressions but limited the populations to specific categories of alleged misconduct, identified by which charges are detailed under the UCMJ. I did this specifically for cases associated with drug offenses, sexual misconduct, and general offenses. This allowed me to isolate the effects further within these misconduct subgroups. Lastly, I performed the same regressions but limited the population to instances of trials with a jury as the sentencing authority compared to those with a military judge.

II.   BACKGROUND

A.   ACKNOWLEDGMENTS AND RECENT INSTITUTIONAL EFFORTS TO COMBAT BIAS

There has been an increase in efforts to address the subject of bias and discrimination within the service in recent years with legislation, directives, and guidance from civilian and military leadership (Esper, 2020), (Berger, 2020). These acknowledge that work must continue to build a climate of equal opportunity, and that an active approach is necessary to address cultural issues within the service that may be prejudicial to an inclusive command climate, opportunity for equal treatment, and a uniform path to retention and promotion.

Former Secretary of Defense Mark Esper issued a memorandum on 14 July 2020 that mandated both short- and long-term approaches towards building a more inclusive culture. Efforts include broad policy changes to address unconscious bias, educating service-members on bias and prejudice, and greater mandates to gather data to help analyze these efforts and identify areas where bias or discrimination exist unchecked (Esper, 2020). Much of the implementation was left to the individual branches, with each developing a service-tailored plan.

Even prior to the Secretary of Defense's guidance, Marine Corps Commandant General Berger issued similar guidance to the Corps, with direction to remove all confederate paraphernalia from Marine Corps Installations, make certain combat military occupational specialties available to women, and other initiatives aimed at a progressive migration of the Corps' culture and ethos (Berger, 2020). Additionally, decisive steps were taken to measure and address manifestations of unconscious bias, which included the elimination of consideration of photographs for promotion and special selection boards (United States Marine Corps, 2020a), and closer monitoring of the quarterly criminal activity reports for demographic trends in non-judicial punishments and courts-martial across the Marine Corps (USMC, 2020b).

B. GENERAL FIGURES ON DISPARITIES WITHIN PROMOTION, LEADERSHIP, AND MILITARY JUSTICE

These actions to address our culture indicate a renewed drive to locate and address instances of discrimination, bias, inequity, and prejudice, but the majority of literature, studies, and reports conducted over the last 50 years show that this remains an elusive objective. There is much data to suggest that minorities and women in the service are not promoted and selected for special programs commensurate with White males. While the junior ranks approximate the demographic composition of society, this is not the case for non-commissioned officers and officers. In 2011, a congressional report determined that while non-Hispanic Whites comprise 66 percent of the population, they comprise 77 percent of the officer population (MLDC, 2011). While Black individuals represent 12 percent of the population, they only make up 8 percent of the active-duty officer population, as shown in Figure 1. Stark disparities also exist in the respective populations for women. The active-duty General Officer ranks are even more skewed, with mostly single-digit population representations of both women and minorities (MLDC, 2011).
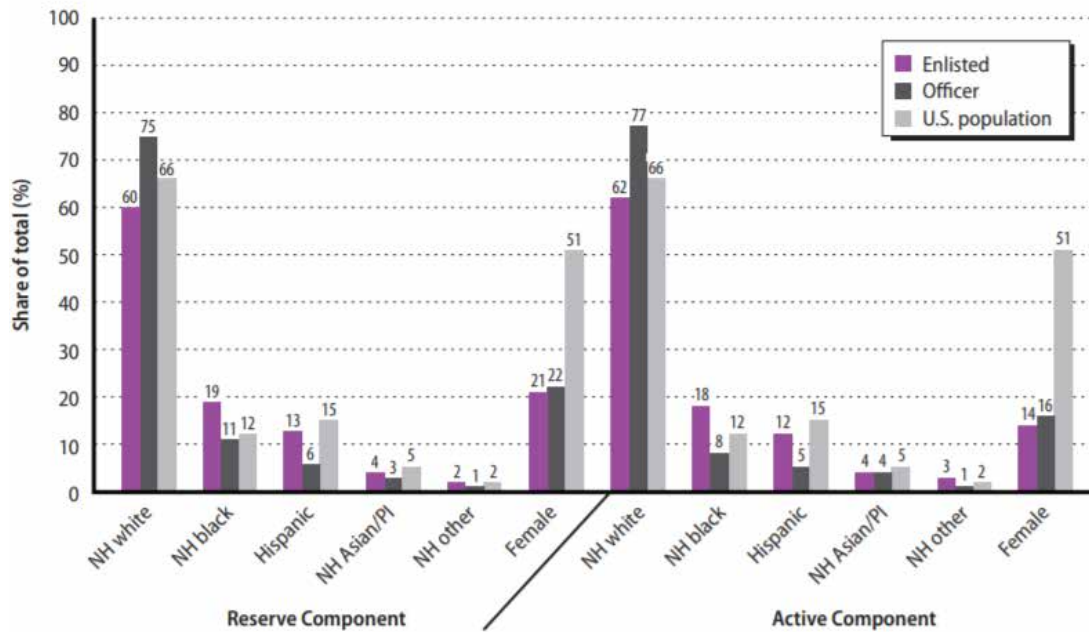
SOURCES: Defense Manpower Data Center, 2009; U.S. Census Bureau, 2008.

Figure 1. Racial/Ethnic Minority and Female Shares of Officers and Enlisted
Personnel by Component, September 2008.
Source: MLDC (2011).

In addition to promotion and selection, there has been much study into how race, gender, and other demographic factors influence an individual's likelihood to face disciplinary measures during their time in service. The Government Accountability Office published a report in 2019 showing certain racial minorities were more likely to be investigated for misconduct and brought to trial across the Department of Defense and Coast Guard (GAO, 2019). Another report compiled by the "Protect Our Defenders" organization similarly found that enlisted members belonging to a minority race were significantly more likely to face punishments, either non-judicial punishment or court-martial, in a given year compared to White service-members (Christensen & Tsilker, 2017). That same report found that racial minorities also were more likely than their White counterparts to be found guilty at courts-martial in the Air Force and Marine Corps.

This represents an ubiquitous pattern that is not limited to military service and is pervasive throughout society. The microcosm of discrimination, bias, and prejudice

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within the Armed Services has only recently received due attention in the decades since the service was de-segregated after World War II (Executive Order No. 9981, 1948). The continuous process of recognizing, researching, combatting, and addressing these issues is an essential part of the journey towards fulfilling the moral obligation to shape our service in a manner that is free from bias, discrimination, and prejudice.

C.   BRIEF OVERVIEW OF THE MILITARY JUSTICE SYSTEM

Commanding Officers are typically the convening authority and decision makers when it comes to bringing an allegation of misconduct into the realm of military justice. Once an alleged violation of the UCMJ occurs, the Commanding Officer has several options available at their discretion. For lower-level offenses, informal or formal counseling may be deemed appropriate, and this may or may not be included in a service member's career files. As the severity of the misconduct increases, a Commanding Officer may decide to administer non-judicial punishment (NJP) to a service member under Article 15 of the UCMJ. This is a method for dealing with minor offenses, has limited options available for punishment, and is not considered a judicial proceeding. In most cases, a service member may either accept punishment at NJP, or deny non-judicial proceedings, opting instead to face a trial court-martial (Manual for Courts-Martial, 2019) If a service-member maintains their innocence in light of allegations brought for at NJP, they may demand a trial at courts-martial which affords them the greater burden of proof required at courts-martial and representation by defense counsel for special and general cases.

Should a Commanding Officer decide to try a service-member at courts-martial, there are three levels: summary, special, and general courts-martial. The standard of proof required for conviction at all levels of courts-martial is "beyond a reasonable doubt" (*Voting and Rulings,* 2016). A summary court-martial (SCM) may be convened by the unit Commanding Officer, has limited maximum punishments, and is administered locally by an officer designated by the command (*Who May Convene Summary Courts-Martial,* 2016). SCMs are used for lesser offenses to be tried under the UCMJ. The accused is not afforded military representation, but may provide counsel at their expense.

Per rule 1301 of the Manual for Courts-Martial, maximum punishments for SCM includes confinement for one-month, hard labor without confinement for 45 days, restriction, forfeiture of two-thirds of one month's pay for one month, a fine of up to two-thirds of one month of the highest rate of pay, and reduction to E-1 (MCM, 2019).

Special courts-martial (SPCM) are for more serious offenses. The convening authority for SPCM is typically at the O-6 level (*Who May Convene Special Courts-Martial*, 2016). SPCMs are administered by a military judge with the option of a jury with four members, and the service member is provided military representation (*Courts-Martial Classified*, 2016). Maximum punishments are greater than SCM, with periods of confinement up to one year, forfeiture of two-thirds of one month's pay for one year, a fine of up to two-thirds of one year of the highest rate of pay, and bad-conduct discharge from the service (MCM, 2019).

General courts-martial are reserved for the most serious allegations of misconduct. Similar to a SPCM, a GCM is administered by a military judge with the option of a jury panel comprised of eight military members, twelve for capital cases. (*Courts-Martial Classified*, 2016) Service-members are afforded military representation. Maximum punishments for GCM vary according to UCMJ article of misconduct, but include up to life in prison, death, total forfeitures of pay and allowance, reduction to E-1, and dishonorable discharge from the service (MCM, 2019).

Similar to a civilian court, service-members are either acquitted or found guilty at the conclusion of the trial, and punishments are determined by the sentencing authority. Service-members are often charged under one or more articles of the UCMJ, but are only required to be found guilty on one account to incur conviction and punishment. Pre-trial agreements may be entered on the advice of their counsel, and service-members may not be compelled to testify against themselves (MCM, 2019).

III.   LITERATURE REVIEW

After President Truman issued executive order 9981 in 1948, the nation took the first steps towards addressing discrimination in the service. The order states that "there shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion, or national origin" (Exec. Order No. 9981, 1948). This was a watershed moment for the United States which had previously segregated Black from White service-members, but represented only the beginning stages towards equal treatment.

A.   DOD TASK FORCE ON THE ADMINISTRATION OF MILITARY JUSTICE IN THE ARMED FORCE

Nearly a quarter-century after the signing of Executive Order 9981, the executive branch established a task force to gather data and analyze racial issues, equality, and discrimination within the service, and how those specifically impact the administration of military justice. The task force stated among their findings that "the military services are influenced by broad societal practices, including racial discrimination," and specifically investigated instances of both intentional and systemic racial discrimination (DoD, 1972). Their findings were compelling, with a disproportionate representation of instances of investigation and punishment among racial minorities, compared with their share of the service population. In 1972, Black service-members comprised 21 percent and 16.2 percent of the Army and Marines, respectively, but were the subject of 26.1 percent and 23.3 percent of reports of misconduct. The commission also examined instances of soldiers going absent without leave (AWOL) in the Army, with 27.8 percent of cases being attributed to Black soldiers, compared with the 21 percent service percentage. Further, Black soldiers who went AWOL received non-judicial punishment 71.7 percent of the time, compared to only 63.1 percent for White soldiers (DoD, 1972). This study hypothesized that the reason for disproportionate representation was not disparate rates of misconduct, but rather because leadership seem inclined to "single-out" minority service-

members for instances of wrongdoing, and overlook commissions of the same types of misconduct by White service-members (DoD, 1972).

While the study found that Black service-members were more likely to be investigated and charged with misconduct, it did not note significant differences in trial outcomes or punishments between differences races given the same category of misconduct (DoD, 1972). Further, the commission found that minority service-members were more likely to face Article 15 (non-judicial punishment), had higher rates longer and periods of pre-trial confinement, and represented a disproportionate percentage of courts-martial, service correctional facility populations, and administrative discharges (DoD, 1972). Also among their findings was that a connection exists between racial representation in the higher ranks, and increased difficulties faced by minority service-members for competitive job specialties and promotion (DoD, 1972). While this report is nearly 50 years old, it established the baseline for the for the DoD's attempt to address these issues and also preemptively echoed the findings of numerous subsequent studies.

B.   GOVERNMENT ACCOUNTABILITY OFFICE REPORT 19–344

In May 2019, the United States Government Accountability Office issued a report to the Committee on Armed Services in the House of Representatives titled "Military Justice – DoD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities." As indicated by the title, differences in how the diverse services record racial and demographic data made it difficult to evenly compare treatment across the DoD. The study still found that Black, Hispanic, and male service-members faced rates of investigation, non-judicial punishment, and courts-martial at a rate higher than their than their service proportion when compared to Whites and women (GAO, 2019). This finding was only for the Air Force and Marines, as the other services did not maintain adequate data to analyze their practices. Additionally, when examining the outcomes of trials at special and general courts-martial, race generally did not play a significant role in conviction rates across the services (GAO, 2019). Gender was statistically significant for the Marine Corps, with female Marines convicted at special and general courts-martial at rates less than male Marines. Further, most indications show

that race and gender did not play a significant role in the severity of punishments following conviction at courts-martial, with the Navy and Marine Corps showing slightly lesser punishments in this category for Black Sailors and women, respectively (GAO, 2019).

C.   RACIAL DISPARITIES IN MILITARY JUSTICE

A 2017 report from an organization known as "Protect Our Defenders" analyzed data received by means of the Freedom of Information Act, and came to similar conclusions as the GAO report. Based on the service, this organization found that Black service-members were between 1.29 and 2.61 times as likely to be the subjects of investigation or disciplinary proceedings when compared to White service-members (Christensen & Tsilker, 2017). Asians were less likely than Whites to be the subject investigation or disciplinary proceedings. One item did conflict with the GAO report, in that Protector Our Defenders found that from 2006 to 2015, Black Marines were as much as 2.61 times as likely as White Marines to be convicted, albeit specifically at general courts-martial (Christensen & Tsilker). The other services did not demonstrate a significant difference in conviction rate at courts-martial based on race (Christensen & Tsilker, 2017).

D.   THE EQUITY OF PUNISHMENT IN THE NAVAL ACADEMY
CONDUCT SYSTEM: A STATISTICAL ANALYSIS

I attempted to locate instances where similar studies have examined the topic of race/ethnicity within the military justice system through a scholarly lens, but there was very little available within that category. One useful instance of analysis of a similar topic is found in a Naval Postgraduate School thesis titled "The Equity of Punishment in the Naval Academy Conduct System." In this thesis, Lieutenant Matthew Waesche analyzed the Naval Academy's Administrative Conduct System which was utilized to administer discipline to Midshipmen from 1998 to 2001. Through multiple regression analysis, LT Waesche found systemic inequity, with women and minority midshipmen being more likely to face discipline and receive a more severe form of punishment compared to White male Midshipmen (Waesche, 2002). Both women and minority Midshipmen

represented a greater share of the yearly discipline cases relative to their population proportions, indicating an over-representation for instances of adjudicated misconduct. The level of punishment was quantified with the number of demerits awarded per given instance of misconduct, and inequity was recorded here with statistical significance for several categories. Specifically, Black and Asian Midshipmen received on average 1.534 and 1.643 more demerits than White Midshipmen, and female Midshipmen received an average of 1.351 more demerits than males (Waesche, 2002). While Midshipmen are not service-members and the discipline system at the Naval Academy is separate from the UCMJ, this microcosm represents a parallel structure of military justice and is plagued by many of the same inequities and inconsistencies shown in the studies of military justice (Waesche, 2002).

E.   RACIAL SELECTION IN DEPLOYMENT TO IRAQ AND AFGHANISTAN

I have discussed the role race/ethnicity plays in promotions, selection, and discipline, but studies have shown that bias and inequity can extend to many other areas of military service. In 2019, a study by Laura Armey, Peter Berck, and Jonathon Lipow found that Black Soldiers in the U.S. Army who served between 2001 and 2003 were over-represented in non-combat jobs compared to their White counterparts. Additionally, the study showed that Black Soldiers were less likely to serve and deploy with combat units, and those Black Soldiers that deployed with combat units were less likely to see combat, and more likely to be excluded from deployments or be sent home from deployments due to disciplinary action (Armey, Berck, & Lipow, 2019). While a host of factors influence an individual's experience in job selection and deployments, the authors found that their findings were "consistent with a pattern of systematic institutional bias or discrimination against Blacks in the US Armed Forces" (Armey, Berck, & Lipow, 2019).

F.   AN EMPIRICAL ANALYSIS OF RACIAL DIFFERENCES IN POLICE USE OF FORCE

This topic is certainly not limited to military justice. The DoD Task Force from 1972 stated "the military does not stand apart from the society it serves and is not

immune from the forces at work in society" (DoD, 1972). Those of us serving in the military represent the society from which we were recruited. All service-members were civilians first, and the opinions, perceptions, and biases that reside within all of us are shaped by our environment and influences during those formative years. Our military culture is an amalgam of our different backgrounds, and it is not unexpected that bias and discrimination from civilian society would permeate our military.

I utilized civilian rates of arrest in this study as a civilian comparison to courts-martial rates, as arrest rates are one of the closest reasonable civilian comparisons to courts-martial on which data was available. On the subject of civilian arrests, Roland Fryer showed in his 2016 study titled "An Empirical Analysis of Racial Differences in Police Use of Force" that Black and Hispanic civilians were as much as twice as likely to be stopped or arrested by police compared to White civilians. He also found that use of any type of force during a police encounter was similarly much more likely for minorities (Fryer, 2016). While this reflects one facet of the justice system in broader American society, it is not unexpected that the disparities, bias, and prejudice that are evidenced by these findings filter through to the culture of the military as well, and play a role in shaping the difficulties faced by the military justice system in regards to equality and bias.

IV. METHODOLOGY

A. INTRODUCTION

Through summary statistics and multiple models and iterations of regression analysis, I analyzed population representation of individual characteristics, and the correlation between dependent variables of interest, namely chance of conviction and severity of punishment, and multiple explanatory and control variables.

B. OVERVIEW OF DATA

1. Data Set from CMS-LA

A data-set was obtained from the Marine Corps' Case Management System - Legal (CMS-LA), which contained all special and general courts-martial results from January 2017 through August 2020. The variables present in this data set are detailed in Table 1. After extracting the Electronic Interchange Personal Identifier (EDIPI) for the accused, trial and defense counsel, and military judge, a second data request was made through the Marine Corps' Total Force Data Warehouse (TFDW) for additional explanatory variables.

Table 1.   Data from CMS-LA

Data Column	**Description**
EDIPI	The Accused's Electronic Data Interface Personal Identifier
Last Name	The Accused's Last Name
First Name	The Accused's First Name
M.I.	The Accused's Middle Initial
Court Type	Category of Court-Martial (Special or General)
TC	Name of Trial Counsel
TC Service	Trial Counsel Service (Marine Corps or Navy)
DC	Name of Defense Counsel

Data Column	Description
DC Service	Defense Counsel Service
MJ	Name of Military Judge
MJ Service	Military Judge Service
Composition	Jury Composition (Enlisted, Officer/Enlisted, Officer, Judge Alone)
Disposition Type	Trial Outcome (Guilty or Acquitted)
Date Disposition	Date of Trial Completion
PTA	Existence of a Pre-Trial Agreement
Pleas and Findings	Details about the Individual Charges
Sentence	Details about the Sentence/Punishment Adjudged

2.   Data Set from TFDW

The additional explanatory variables requested from the TFDW for the accused and military justice practitioners are listed in Tables 2 and 3.

Table 2.   Data from TFDW on the Accused

Data Column	Description
EDIPI	The Accused's Electronic Interface Data Personal Identifier
Last Name	The Accused's Last Name
First Name	The Accused's First Name
Grade	The Accused's Military Pay Grade
Age	Age of the Accused
Race	Race Code in Marine Corps Total Force System (MCTFS)
Race Description	Description of Race Code
Ethnic Group Code	Ethnic Code in MCTFS
Ethnic Group Description	Description of Ethnic Code

Data Column	Description
MOS	Military Occupation Specialty
Years of Service	Years of Service
Sex	Sex of Accused
Date of Rank	Date of Current Rank
AFQT Score	Armed Forces Qualification Test Score
GCT	General Classification Score
NJP	NJP Flag

Table 3.   Data from TFDW on Military Justice Practitioners

Data Column	Description
EDIPI	Military Justice Practitioner's Electronic Interface Data Personal Identifier
Last Name	Military Justice Practitioner's Last Name
First Name	Military Justice Practitioner's First Name
Grade	Military Justice Practitioner's Military Pay Grade
Race	Race Code in MCTFS
Race Description	Description of Race Code
Ethnic Group Code	Ethnic Code in MCTFS
Ethnic Group Description	Description of Ethnic Code

3.   Dependent Variables

The regressions in this study have several different dependent variables in order to facilitate answering the research questions. The two main dependent variables are whether an individual is convicted at courts-martial, and the individual's severity of punishment if they were convicted at courts-martial.

a.   *Trial Outcome*

A conviction at trial is coded as 1 and an acquittal at trial coded as 0.

b.   *Punishment*

Punishments awarded as a result of a conviction at special and general courts-martial may include reprimand, forfeiture of pay and allowances, fine, reduction in pay grade, restriction to specified limits, hard-labor without confinement, confinement, punitive separation, and death (limited to general courts-martial with capital cases). Each category of punishment has a range of severity based on rank, offense, and other specifications. There are two characterizations of service that may be awarded during punitive discharge, which also vary by a number of specifications (MCM, 2019). For the purpose of this study, I focused my analysis on monetary fines/forfeitures, reduction in pay grade, confinement, and punitive discharge.

Monetary fines/forfeitures were assessed in the form of a continuous variable with the amount of the fine tantamount to punishment severity. Per 10 U.S. Code § 858b – Art. 58b., conviction at special and general courts-martial that results in confinement and/or discharge may incur a minimum sentence that includes withholding of two-thirds or all of a member's pay and allowances for the confinement period, depending on the category of misconduct and type of courts-martial. Additionally, the military judge may exercise discretion in withholding pay and allowances in these circumstances so as not to negatively impact the service-member's dependents during their confinement, should they have them. Based on the data obtained, it is difficult to determine if forfeitures of pay and allowances during confinement are impacted by either minimum sentencing or the discretion of the judge relative to the accused's dependents, and those independently adjudged. Due to this lack of clarity, I only analyzed forfeitures and fines that were awarded outside of confinement which are not impacted by either minimum sentences or withholding discretions. For instance, if a Marine was sentenced to 10 months confinement and a forfeiture of $1,000 per month for 12 months, I only recorded $2,000 of forfeitures for that observation. The $1,000 per month withheld during confinement may be impacted by minimum sentencing standards or withholding discretions, but the

forfeiture collected outside the confinement window is not compounded by those effects. If a Marine was not sentenced to any confinement and was awarded forfeiture of $1,000 per month for 12 months, I recorded the entire $12,000. All fines were recorded at the value awarded at sentencing, and are not impacted by minimum sentencing standards, withholding discretion, or suspensions. The amount of forfeitures and fines were combined to a single amount representing the total pecuniary penalty.

A trial outcome that results in reduction in grade is indicated by a 1 if the Marine was reduced and a 0 otherwise. There is no distinction between an E-2 reduced to E-1 or an E-9 reduced to E-1, only that the Marine was reduced. Limitations on the data collected prevent additional insight to severity of individual instances of grade reduction. Officers may not be reduced at courts-martial.

Confinement is measured in months adjudged at the conclusion of trial. For the purposes of this study, only confinements are measured and not instances of restriction to specified limits. If a Marine is awarded a quantity of days of confinement not corresponding to multiples of 30, I divided the amount by 30 and record the figure as such. For example, an observation where a Marine is awarded with 125 days of confinement would be represented by 4.167 months. Credit for time served prior to trial, sentencing suspensions, and sentencing impacts from pre-trial agreements are not factored due to limitations in data. The figure recorded is the initial length of the confinement as determined by the sentencing authority.

Punitive discharge is measured as a binary outcome and not in terms of severity of category of discharge. All individuals awarded a punitive discharge at the conclusion of trial were assigned a 1, and all others a 0.

Multiple punishments are frequently awarded at the conclusion of trial, but each regression with a punishment as the dependent variable only analyzes one punishment at a time as the outcome.

4. Independent Variables

The main explanatory variables in this data-set are the individual's race/ethnicity and gender, and the race/ethnicity of the trial/defense counsel and military judge. Additional control variables include officer/enlisted, MOS (used to determine a binary outcome for Infantry), age, time in service (TIS), etc.

a. *Race/Ethnicity*

The Marine Corps utilizes several different methods for capturing race and ethnicity within their manpower systems, including: "Race AGG Code, Race Code, Ethnic Group, and Ethnic Code." Marines are generally responsible for providing their own information regarding race and ethnicity at accession. Marines are also permitted to not provide any data about their race/ethnicity if they so desire. The race/ethnic information is input into MCTFS and is stored according to the information in Tables 4 and 5.

Table 4.   Marine Corps Race Codes. Source: USMC (2013).

Code	Description
A	American Indian or Alaska Native
B	Asian
C	Black or African American
D	Native Hawaiian or other Pacific Islander
E	White
F	Declined to Respond

Table 5.   Marine Corps Ethnic Group Codes. Source: USMC (2013).

Code	Description
1	Other Hispanic
2	US/Can Indian
3	Other Asian
4	PR (Puerto Rican)
5	Filipino
6	Mexican
7	Alaska Native
9	Cuban
A	African
B	Caribbean
D	Indian
E	Melanesian
F	Australian/Aborigine
G	Chinese
H	Guamanian
J	Japanese
K	Korean
L	Polynesian
P	European/Anglo
Q	Other Pacific Islander
S	Latin American
T	Arabian
V	Vietnamese
W	Micronesian
Z	Declined to respond

The following groups were created based on these categories of responses:

- White - This includes all individuals who identify as White and not Hispanic. Within the regressions in this study, the White and Asian race collectively are utilized as the reference group.

- Black

- Asian

- Other - This includes Native Hawaiian, Pacific Islander, American Indian, Alaskan Native, or other ethnicity not Hispanic

- Missing - If an individual declined to provide either race or ethnicity, they were categorized as missing.

- Hispanic - If an individual list their ethnicity as Hispanic but lists another race, they are categorized only as Hispanic.

For each race/ethnicity, a 1 will indicate an individual belongs to that group and a 0 otherwise. An individual within this study is only categorized under one of the previously mentioned race/ethnic groups. I also created variables for "Black Male" and "Hispanic Male" by interacting the respective race/ethnicity variables and sex variable.

b.   Sex

This variable indicates the sex of the individual, with a 1 for males and 0 for females.

c.   Trial Counsel, Defense Counsel, Military Judge

Military justice practitioners are coded for their racial/ethnic characteristics the same as the accused. If the trial records did not include information on military justice practitioners, or the individual otherwise declined to provide racial/ethnic information, they were captured as missing. For the purpose of analysis, I created additional variables capturing the interactive effects of the race/ethnicity of the accused and military justice

practitioners. These variables are titled "Trial Counsel and Accused the Same," "Defense Counsel and Accused the Same," and "Military Judge and Accused the Same." In all cases where the respective military justice practitioners and accused are the same race/ ethnicity, including when the accused is White and the respective military justice practitioners are Asian and vice versa, this is indicated by a 1 and a 0 otherwise.

d. Infantry MOS

If an individual retains an MOS that belongs to the Infantry community (03xx), this was indicated by a 1. All other MOS groups, to include combat service support, aviation, law, etc. were indicated by a 0.

e. Age

This is a continuous variable represented by the age in years of the individual.

f. Years of Service

This is a continuous variable represented by the number of years of service based on the individual's Armed Forces Active-Duty Base Date.

g. Categories of Misconduct

Indicator variables were created to represent if an individual was accused of the following UCMJ articles:

- Article 112a (drug related offenses)
- Articles 120x (sexual misconduct)
- Article 134 (general article)

A 1 signifies an individual was charged under one of the preceding UCMJ articles, and a 0 for all three variables indicates charges under other UCMJ articles not specifically analyzed in this study. Often an individual was charged under multiple UCMJ articles, but it was not possible to determine under which article the accused was found guilty. These variables only indicate the presence of the charge, and not necessary a guilty finding of that specific charge.

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h.   Jury Trial

If the trial featured a jury, the variable is assigned a 1. If the trial was decided by a military judge alone, the variable is assigned a 0.

5.   Data Cleaning and Merging

The dataset obtained from CMS-LA contained 1065 observations of courts-martial from January 2017 to August 2020. This dataset contained the EDIPIs of the accused, but only names and rank of military justice practitioners. In order to obtain additional data on military justice practitioners from TFDW, individual EDIPIs had to be researched for each trial counsel, defense counsel, and military judge from the Marine Profile interface from the Manpower and Reserve Affairs (M&RA) web portal. In cases where the EDIPIs could not be located or where the military justice practitioners were members of a different service, the cells were left blank.

EDIPIs in the CMS-LA data for the accused were searched for duplicate and dubious values. There were instances where the same EDIPI was used for different individuals, generic EDIPIs (1234567890) were input, or the EDIPI did not correspond otherwise to the individual indicated as the accused in the trial record. I made every attempt to locate the correct EDIPI from the Marine Profile interface from M&RA for accused individuals. In cases where the EDIPI could not be corrected, the observation was omitted. After reviewing, obtaining, and cleaning EDIPIs for the accused and military justice practitioners, the separate request for demographic data was submitted to and obtained from TFDW.

Utilizing the EDIPI as the common vector in both datasets, I then utilized the VLOOKUP function in Microsoft Excel to merge columns of data together into one dataset. Prior to blending all columns of data, I cross-validated all observations by comparing the last names of each observation as retrieved by the common EDIPI, and then reviewed for inconsistencies. There were several instances where a valid EDIPI was input into CMS-LA, but the EDIPI did not correspond to the same Marine as retrieved by TFDW. This was only determined after obtained detailed demographic data from TFDW, and those observations were omitted.

Lastly, the dataset was reviewed to locate any duplicate trial records. Those records were omitted, and the final dataset contained 922 observations. A unique trial identifier was added, and the accused and military justice practitioners were assigned a unique numerical identifier that did not correspond to their EDIPI or any other personally identifiable feature. EDIPIs and names for all individuals were then sanitized from the dataset. There are no outcomes or information as a part of this study that can be tied to any individual on which data was obtained.

6.   Summary Statistics

The following tables are descriptive statistics of the final merged dataset. For binary variables, the corresponding decimal for the mean column is the proportion of the observations holding that particular characteristic. For instance, 0.018 or 1.8 percent of all accused were officers. Binary values do not show a minimum and maximum value, and the mean column is the average of all observations for that variable.

Table 6 details descriptive demographic, service, and racial/ethnic characteristics of the accused. These characteristics are observations at the time of data collection, which was February 2021. Ideally, these characteristics would reflect the accused at the date of trial, but it is not possible to aggregate the data as such with current Marine Corps collection methods. The variables Age, Years of Service, and NJP are negatively affected by this. Age and Years of Service potentially are recorded as much as four years and one month greater for a single observation if the trial was held in January 2017. The NJP variable is confounded by the possibility that the NJP occurred post-trial. The misrepresentations for Age and Years of Service would likely be distributed evenly across the dataset and should not prevent the regression models from reliably predicting the impact to the dependent variables. The impacts to NJP are likely small. The NJP variable was only utilized for summary statistics and not as an explanatory variable in any regression models.

Officers only represented 1.8 percent of the accused, the average age was 26, and 20.1 percent held an Infantry MOS. 96.5 percent were males, the average AFQT score was 58.9, and the average length of service at either time of data collection or date of

separation was 6.2 years. 47.7 percent of the accused were White, 21.7 percent were Black, and 23.6 percent were Hispanic.

Table 6.   Descriptive Statistics of the Accused

Variable	Obs	Mean	Std. Dev.	Min	Max
Officer	922	0.018	.135		
Age	922	25.985	5.977	18	59
Combat Arms	922	.201	.401		
Years of Service	922	6.203	5.683	0	38
Sex	922	.965	.183		
AFQT Score	922	58.956	18.002	0	99
GCT Score	922	105.83	14.065	0	147
NJP	922	.317	.465		
White	922	.477	.5		
Black	922	.217	.412		
Asian	922	.031	.175		
Other	922	.034	.18		
Missing	922	.025	.156		
Hispanic	922	.236	.425		

Table 7 shows the descriptive statistics for the racial/ethnic characteristics of the trial counsel, defense counsel, and military judge. Individual military justice practitioners were often present for multiple trials, with each appearance generating the corresponding data for the observation. If there was no information available for military justice practitioners for an observation, it was captured as missing. If the individual declined to provide racial/ethnic data, it was also captured as missing.

Table 7.   Descriptive Statistics of Military Justice Practitioners

Variable	Obs	Mean	Std. Dev.
Trial Counsel White	922	.789	.409
Trial Counsel Black	922	.016	.127
Trial Counsel Asian	922	.013	.113
Trial Counsel Other	922	.076	.265
Trial Counsel Missing	922	.044	.206
Trial Counsel Hispanic	922	.063	.243
Trial Counsel Minority	922	.154	.361
Defense Counsel White	922	.698	.459
Defense Counsel Black	922	.035	.183
Defense Counsel Asian	922	.042	.201
Defense Counsel Other	922	.025	.156
Defense Counsel Missing	922	.174	.379
Defense Counsel Hispanic	922	.034	.18
Defense Counsel Minority	922	.086	.28
Military Judge White	922	.58	.494
Military Judge Black	922	.093	.291
Military Judge Asian	922	.028	.166
Military Judge Other	922	0	0
Military Judge Missing	848	.237	.426
Military Judge Hispanic	922	.08	.272
Military Judge Minority	922	.174	.379
TC and Accused Same	922	.437	.496
DC and Accused Same	922	.401	.49
MJ and Accused Same	922	.35	.477

Table 8 displays descriptive statistics for the trial characteristics. 91.1 percent of trials resulted in a conviction, 23.1 percent involved drug charges, 21.8 percent involved sexual misconduct, and 32.3 percent featured a charge under Article 134. Of note, the punitive variables: Discharge, Confinement Months, Fine, and Reduction, are summaries of only trials where the accused was found guilty.

Table 8.   Descriptive Statistics of Trial Characteristics

Variable	Obs	Mean	Std. Dev.	Min	Max
Trial Outcome	922	.911	.285		
Jury Trial	922	.184	.388		
Pre-Trial Agreement	922	.4	.49		
Drug Offense	922	.231	.422		
Sexual Offense	922	.218	.413		
General Article	922	.323	.468		
Discharge	840	.724	.447		
Confinement Months	840	22.625	56.77	0	600
Fine	840	394.954	2669.192	0	66000
Reduction	840	.839	.367		

A summary of trial outcomes broken down by race/ethnicity is shown in Table 9. Note that the conviction rate for those categorized as "Other" is greater than the sample mean, but the sample size for "Other" is relatively small compared to the other race/ ethnic categories. The conviction rate for Hispanic Marines is also 2.65 percentage points greater than White Marines.

Table 9.   Trial Outcomes by Race/Ethnicity

Race/Ethnicity of Accused	Convicted		Acquitted	
	Number	**Percentage**	**Number**	**Percentage**
White	399	90.68	41	9.32
Black	177	88.5	23	11.5
Asian	26	89.66	3	10.34
Hispanic	196	93.33	14	6.67
Other	30	96.77	1	3.23
Missing	12	100	0	0

C.   POPULATION REPRESENTATION

The population representation model is the percentage representation of each race/ ethnic category and sex relative to the population of interest. This is determined by dividing the quantity of individuals within that subset by the population total, and displaying the results in percentage form.

D. REGRESSION MODELS

Multiple instances of regression analysis were performed to determine the effect of the explanatory variables on trial outcomes. Ordinary least squares regressions were utilized for models with both binary and continuous dependent variables. The following formulas were utilized:

$\text{TrialOutcome}_i = \beta_0 + \beta_1\text{Black}_i + \beta_2\text{Hispanic}_i + \beta_3\text{Other}_i + \beta_4\text{Sex}_i + \beta_5\text{Age}_i + \beta_6\text{BlackMale}_i + \beta_7\text{HispanicMale}_i + \beta_8\text{YearsService}_i + \beta_9\text{CombatArms}_i + \beta_{10}\text{Officer}_i + \beta_{11}\text{DCandAccusedSame} + \beta_{12}\text{TCandAccusedSame}_i + \beta_{13}\text{MJandAccusedSame}_i +$

·   Reduction - The estimated impact in percentage points to the individual's chance of being reduced, as it deviates from the estimate for the reference group.

·   Discharge - The estimated impact in percentage points to the individual's chance of being punitively discharged, as it deviates from the estimate for the reference group.

In models where the impact was isolated to trials with specific charges, the same regression was utilized where $TrialOutcome_i$ is the dependent variable, but the observations were limited only to trials with those specific charges.

E.   NULL HYPOTHESIS

In performing these diverse regressions, I attempted to verify my null hypothesis:

·   The chance of conviction and severity of punishment if convicted is equitable without regard for that race or ethnicity of the accused Marine.

V. ANALYSIS

A. POPULATION REPRESENTATION

Prior to regression analysis, I determined the population representation of those who faced courts-martial during the sample years. I then compared the population representation of the sample with the Marine Corps at large to determine any inconsistencies between the two groups. I utilized demographic data made available by the Center for Naval Analysis and Force Readiness Division in the annually produced "Population Representation in the Military Services" (Pop Rep). At the time of this study, the latest available version was from 2018. The courts-martial data spanned 2017–2020 which allowed two years of overlap to analyze the two respective populations. I organized the courts-martial groups identically to the Pop Rep, with categories for male/ female, race, and ethnicity. I was not able to determine if any Marine facing courts-martial claimed two or more racial groups, so that category was omitted. If a Marine did not disclose racial or ethnic data, they were categorized as "Unknown" for race. The only two categories for ethnicity are "Hispanic" and "Not Hispanic." If a Marine's ethnicity was not known, they were categorized under "Not Hispanic." Within this section, the categories for male/female, race, and ethnicity all individually sum to 100 percent of the observations.

1. Comparison of Accused Marines to Active Enlisted Marine Population

In 2017, 254 Marines were court-martialed. In 2018, the number was 273. Only five and four officers were court-martialed in 2017 and 2018, respectively. Given the small sample size, the officer results were not included in this part of the analysis.

The value of each category is divided by the total number for the year to determine percentage. An additional column was added for expected value. This value is determined by calculating the equivalent service representation percentage of the court-martial population for the given year. For instance, there were 91.26 percent male Marines in 2018. There were 273 courts-martial that year, and the expected value for

male Marines court-martialed in 2018 would be found by multiplying 273 by .9126 and rounding to the nearest whole number. The summary for 2017 is found in Table 10, and 2018 is found in Table 11.

Table 10.   Active Marine Enlisted Population Representation 2017. Source: OUSD (2017).

Individual Characteristic	Service-Wide		Courts Martial Population		Expected
	Number	**Percentage**	**Number**	**Percentage**	**Number**
Male	149,352	91.46	245	96.46	232
Female	13,938	8.54	9	3.54	22
White	130,087	79.67	172	67.72	202
Black	18,523	11.34	54	21.26	29
AIAN[1]	1,749	1.07	6	2.36	3
Asian	4,468	2.85	7	2.76	7
NHPI[2]	1,883	1.15	8	3.15	3
Two or More Races	1,503	0.92	N/A	N/A	N/A
Unknown	4,897	3	7	3.15	8
Hispanic	36,096	22.11	58	22.83	56
Not Hispanic	127,194	77.89	196	77.17	198
Total	163,290		254		

1. American Indian, Alaska Native
2. Native Hawaiian, Pacific Islander

Table 11.   Active Marine Enlisted Population Representation 2018. Source: OUSD (2018).

Individual Characteristic	Service-Wide		Courts Martial Population		Expected
	Number	**Percentage**	**Number**	**Percentage**	**Number**
Male	149,740	91.26	261	95.60	249
Female	14,343	8.74	12	4.40	24
White	131,283	80.01	191	69.96	218
Black	18,264	11.13	59	21.61	31
AIAN[1]	1,735	1.06	4	1.47	3
Asian	4,739	2.89	13	4.76	8
NHPI[2]	1,853	1.13	3	1.15	3
Two or More Races	1,667	1.02	N/A	N/A	
Unknown	4,542	2.77	3	1.10	8
Hispanic	37,896	23.10	69	25.27	63
Not Hispanic	126,187	76.96	204	74.73	210
Total	164,083		273		

1. American Indian, Alaska Native
2. Native Hawaiian, Pacific Islander

The results of this analysis showed several instances of both over- and under-representation. Most significantly, Black Marines comprised 11.34 percent and 11.13 percent of the Marine Corps population in 2017 and 2018, respectively (OUSD 2017, 2018). However, Black Marines represented 21.26 percent and 21.61 percent of the court-martial population for those years, approximately double their service representation. The actual number of Black Marines court-martialed exceeded the expected number by 86 percent and 90 percent. White Marines were underrepresented in both years by approximately 10 percent, males were over-represented by approximately 5 percent, and females were similarly underrepresented. There was not a large quantity of Asian, American Indian/Alaska Native, or Native Hawaiian/Pacific Islander Marines court-martialed in these years, but their expected quantity did not deviate significantly from courts-marital population, with the exception of Asians in 2018 who saw 13 individuals with the expected number of 8.

The Hispanic population of those court-martialed was similar to the service population for both years. The same was true for the non-Hispanic population for both years, with no more than 2 percent deviation between the two populations.

I continued to break-down the courts-martial population for 2019 and 2020 even though Pop Rep data was not available for those years. The percentages of the court-martial population categories remained consistent. Notably, the White population was 70 percent for 2019 and 68.24 percent for 2020. The Black population was 23.47 percent and 21.62 percent for the same years. The tables for 2019 and 2020 are located in Appendix A.

Figure 2 shows the bar plot of percentages for each category for 2017, and Figure 3 shows the same information for 2018. The vertical axis represents the population percentage and the horizontal axis represents each individual demographic category. Marine Corps at large figures are gray, and the court-martial population is brown.
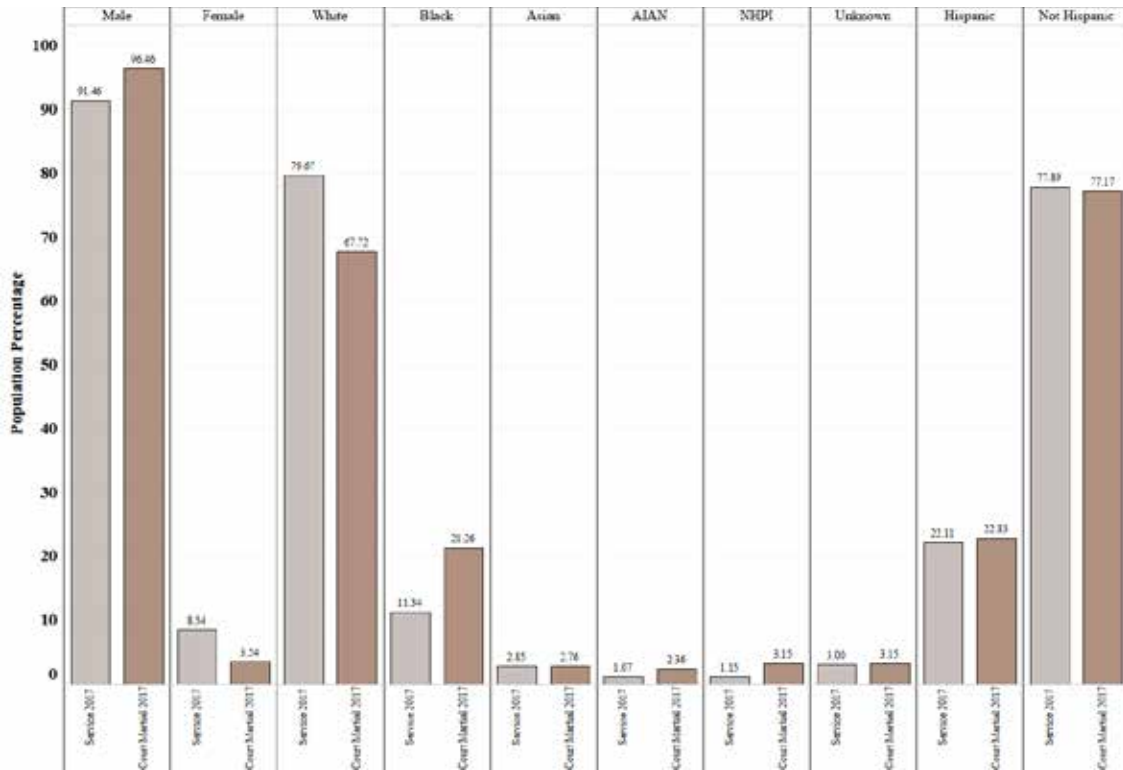
Figure 2.   2017 Pop Rep Data Bar Plot. Source: OUSD (2017).
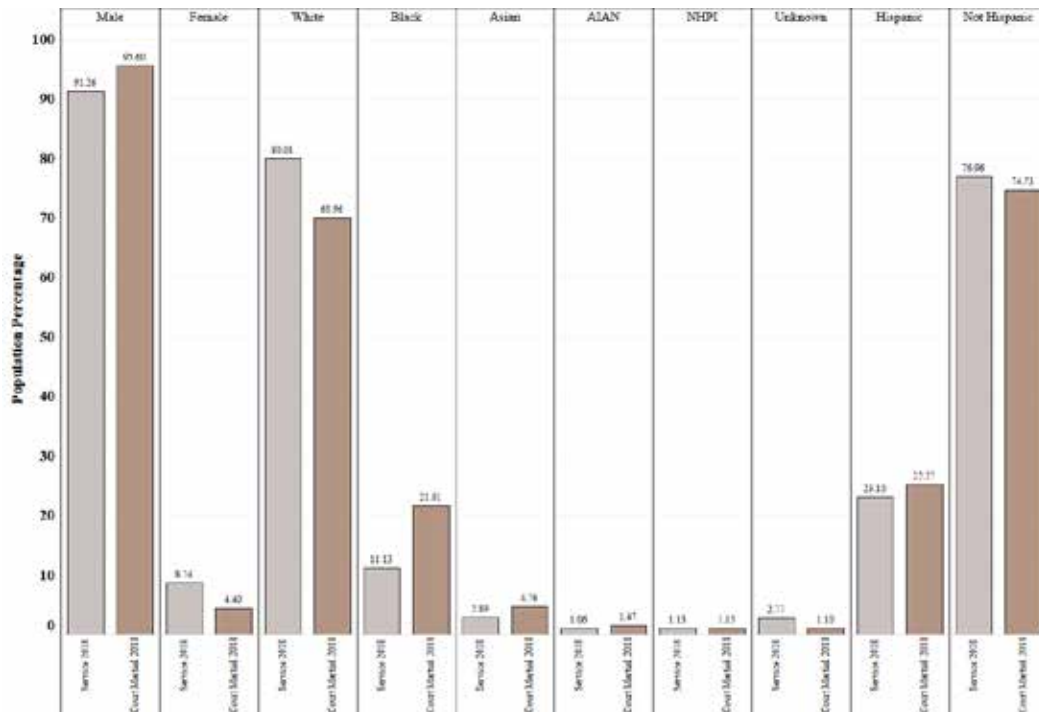
Figure 3.   2018 Pop Rep Data Bar Plot. Source: OUSD (2018).

2. Comparison of Accused Marines to Military Justice Practitioners

I analyzed the race/ethnic composition of the accused and military justice practitioner populations to similarly identify any notable differences between the two groups. In this section, race and ethnicity have been pooled together, with an indicated ethnicity of Hispanic taking precedence over any indicated race. For instance, an individual who indicated an ethnicity of Hispanic but also a race of White was only coded as Hispanic. This is detailed in Table 12.

Table 12.   Accused and Military Justice Practitioners Race/Ethnicity Percentages

Race/Ethnicity	Accused		Trial Counsel		Defense Counsel		Military Judge	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
White	440	47.72	727	78.85	644	69.85	535	58.03
Black	200	21.69	15	1.62	25	2.71	86	9.33
Asian	29	3.15	12	1.3	39	4.23	26	2.82
Hispanic	210	22.78	58	6.29	31	3.36	74	8.02
Other	31	3.36	69	7.48	23	2.49	0	0
Missing	12	1.3	41	4.45	160	17.35	201	21.80

There is a noteworthy difference in the composition of the two groups. Black and Hispanic Marines comprise 21.69 percent and 22.78 percent of those court-martialed, but much less for the military justice practitioners. A simple probability calculation from Table 12 shows that there is roughly a 32 percent chance that a courtroom on a given date will be staffed with only White personnel. The implications are that a minority Marine has a significant chance of walking into the courtroom and not seeing any military justice practitioners who look like them. Within my dataset, 32 percent of the time a Black Marine was tried, the counsel and military judge were uniformly White. For Hispanic Marines, the same figure was 29.52 percent. I make no claims regarding any causation between the race/ethnicity of military justice practitioners relative to the accused and trial outcomes, but it is a notable instance of disparate representation of minorities relative to their White counterparts within both groups.

The figures for military justice practitioners are not unique observations and represent the race/ethnicity of whoever was present for a given observation. Often, a single individual served in multiple trials. A separate table with the race/ethnic details of the unique observations of all military justice practitioners is included in Appendix B. It should be noted that among unique observations, the population proportions of military justice practitioners approximate those of the officer population in the Marine Corps at large with slight under-representation of Black and Hispanic Marines. Officer population representation data in the Marine Corps for 2018 is found in Appendix C.

3. Rates of Non-Judicial Punishment Among Court-Martialed Marines

Lastly, I examined the rate of NJP among the Marines who were court-martialed in the dataset. If a Marine ever received an NJP during their career, it was indicated by the presence of the NJP indicator flag within the data I requested. The summary of the findings is detailed in Table 13.

Table 13.   Rate of NJP Among Court-Martialed Marines

Individual Characteristic	Courts-Martial Population		NJP Flag	
	Number	Percentage	Number	Percentage
White	440	47.72	131	29.77
Black	200	21.69	89	44.5
Asian	29	3.15	11	37.93
Hispanic	210	22.78	48	22.86
Other	31	3.36	9	29.03
Missing	12	1.3	4	33.33

The rate of NJP is 14.73 percentage points higher for Black Marines compared to their White counterparts. Asian Marines also saw higher rates of NJP, but with a smaller sample size. Hispanic Marines were slightly less likely to have received NJP compared to White Marines.

4. Context and Comparison to U.S. Civilian Arrest Records in 2019

It is important to analyze parallel civilian data to establish a reference point for this analysis. I chose to compare Marines tried at courts-martial to civilian arrests, as a civilian arrest does not necessarily indicate an individual is convicted of a crime, similar

to being tried at courts-martial does not necessarily equate to a conviction. This is not a truly analogous comparison, but represents a useful approximation based on the similarities between the civilian and military justice systems. In 2019, there were 6,816,975 arrests made in the United States (Federal Bureau of Investigation, 2019). Of those arrests, 4,729,290 were White and 1,815,144 were black. The total percentage of arrests for White individuals was 69.38 percent, which approximates the representation in the courts-martial data. The percentage of arrests for Black individuals was 26.62 percent, which is higher than the representation in the courts-martial data. (FBI, 2019). The respective population percentages for the U.S. at large in 2019 was 76.3 percent for White individuals and 13.4 percent for Black individuals, which is also similar to the Marine Corps population representation for 2017 and 2018 (U.S. Census Bureau, 2019). Notably, the under-representation for court-martialed White Marines is similar to the U.S. arrest data, and the over-representation for court-martialed Black Marines was slightly less in the Marine Corps than U.S. arrest data. A summary of this data is provided in Table 14.

Table 14.   U.S. Civilian Arrests Population Representation in 2019. Sources: FBI (2019), U.S. Census Bureau (2019).

Individual Characteristic	U.S. Population		U.S. Civilian Arrests	
	Number	**Percentage**	**Number**	**Percentage**
White	250,446,756	76.3	4,729,290	69.38
Black	43,984,096	13.4	1,815,144	26.62
Total	328,239,523		6,816,975	

5.   Summary

This analysis of the population representations shows that Black Marines experience courts-martial and NJP at a rate higher than any other race/ethnic group. There is also much less representation of minorities within military justice practitioners relative to the racial/ethnic makeup of the general population of enlisted Marines. These multiple instances of over- and under-representation elicit the question of whether this

disparity extends to trial outcomes and punishments. Given the broad chasm of representation, I aimed to measure whether the similarity or dissimilarity of the race/ ethnicity of the accused and military justice practitioners had any effect on outcomes and punishments in my regression models.

B.   REGRESSION MODELS

There were 12 observations where the accused declined to provide any race/ethnic data. Those observations were dropped, and the final dataset utilized for regression analysis contained 910 observations. The minimum acceptable lower bound for statistical significance for coefficients in this section is 90 percent. That is, I only note the coefficient if the effect of the given explanatory variable on the dependent variable (Trial Outcome, Punishments) is statistically greater than zero at the 10 percent significance level.

I performed each regression model three times, with each additional iteration adding additional explanatory variables while keeping the same dependent variable. This demonstrated the effect of adding additional explanatory and control variables to the individual coefficients. If a variable was not present within the model, that variable was omitted from the summary table. For instance, no females were included in any trials involving sexual misconduct charges and the variable for sex is subsequently omitted. Where an individual coefficient is discussed, it is implied that the effects of that coefficient are valid given all other variables in the model are held constant. Listed percentage point deviations of likelihood, months of confinement, and dollar amount of forfeitures/fines are relative to the reference group, which is non-Hispanic White and Asian Marines.

1.   Trial Outcomes

a.   *All Charges*

The model with trial outcomes as the dependent variable with no other limitations on the dataset produced a single statistically significant coefficient. An individual whose race is "Other" is 8.2 percentage points more likely to be convicted at courts-martial than

the reference group. The sample size for this category is only 31 individuals, but this echoes the higher conviction rate for "Other," as mentioned previously in the summary statistics portion and shown in Table 9. No other racial, ethnic, demographic, or service characteristic for the accused or military justice practitioner had any significant impact on trial outcomes within this model. Coefficients and z statistics for this model are detailed in Table 15.

Table 15.   Chance of Conviction

	(1)	(2)	(3)
Black	-0.018	-0.016	-0.093
	(-0.68)	(-0.60)	(-0.64)
Hispanic	0.028	0.029	-0.006
	(1.30)	(1.35)	(-0.04)
Other	0.060^{+}	0.065^{+}	0.082^{+}
	(1.74)	(1.96)	(1.84)
Accused is male	0.068	0.072	0.014
	(1.02)	(1.11)	(0.16)
Age of the accused		-0.004	-0.004
		(-0.72)	(-0.69)
Years of service		-0.003	-0.003
		(-0.48)	(-0.52)
Infantry MOS		0.023	0.024
		(1.13)	(1.15)
Accused is an officer		-0.048	-0.046
		(-0.36)	(-0.35)
Black male			0.099
			(0.69)
Hispanic male			0.052
			(0.35)
Accused and DC same race/eth			0.023
			(0.77)
Accused and TC same race/eth			0.000
			(0.02)
Accused and MJ same race/eth			0.000
			(0.02)
Observations	910	910	910

z statistics in parentheses
All z-stats corrected for heteroskedasticity
$^{+}p < 0.1$, $^{*}p < 0.05$, $^{**}p < 0.01$, $^{***}p < .001$

b.   *Trial Outcomes with Drug Charges*

When limiting the outcomes to only trials that featured charges under article 112a of the UCMJ, the sample size decreased to 212 observations. Initially, "Other" demonstrated significant coefficients, but as more controls were added the significance decreased beyond the acceptable threshold. In the final iteration, Age showed a small negative impact to chance of conviction at trials with drug charges. Each additional year of age decreases the chance of conviction by 2.1 percentage points. The coefficient for "Officer" showed strong statistical significance, but with only two observations falling within this category, the results for that coefficient should be disregarded. Coefficients and z statistics for this model are detailed in Table 16.

Table 16.   Chance of Conviction for Trials with Drug Charges

	(1)	(2)	(3)
Black	-0.023	-0.035	-0.280
	(-0.50)	(-0.75)	(-1.11)
Hispanic	0.041	0.032	-0.030
	(1.18)	(0.97)	(-0.71)
Other	0.130$^+$	0.117$^+$	0.108
	(1.94)	(1.75)	(1.37)
Accused is male	0.055	0.049	-0.034
	(0.71)	(0.62)	(-1.47)
Age of the accused	-0.032***	-0.021$^+$	-0.021$^+$
	(-3.81)	(-1.77)	(-1.73)
Years of service		-0.008	-0.007
		(-0.54)	(-0.45)
Infantry MOS		0.007	0.013
		(0.23)	(0.38)
Accused is an officer		-0.752***	-0.730***
		(-6.55)	(-5.72)
Black male			0.245
			(0.95)
Hispanic male			0.053
			(1.32)
Accused and DC same race/eth			-0.032
			(-0.59)
Accused and TC same race/eth			-0.015
			(-0.44)
Accused and MJ same race/eth			0.046
			(1.20)
Observations	212	212	212

z statistics in parentheses
All z-stats corrected for heteroskedasticity
$^+ p < 0.1,$ $^* p < 0.05,$ $^{**} p < 0.01,$ $^{***} p < .001$

c.   *Trial Outcomes with Sexual Misconduct Charges*

When limiting the outcomes to only trials which featured sexual misconduct charges, the sample size decreased to 198 observations. "Other" is again noted with a significant coefficient, but there are only 6 individuals within this category, so the coefficient is disregarded due to small sample subset. An increase to years of service corresponds with a slight decrease to chance of conviction, with each year of service decreasing the chance of by 1.6 percentage points. Individuals holding an infantry MOS

were more likely to face conviction compared to those who do not, with a 9.5 percentage point increase to conviction likelihood. Coefficients and z statistics for this model are detailed in Table 17.

Table 17.   Chance of Conviction for Trials with Sexual Misconduct Charges

	(1)	(2)	(3)
Black	0.016	0.021	0.110
	(0.27)	(0.36)	(1.04)
Hispanic	0.038	0.048	0.132
	(0.79)	(0.99)	(1.44)
Other	0.122^{***}	0.145^{***}	0.236^{*}
	(3.59)	(3.82)	(2.35)
Age of the accused	-0.004	0.013^{+}	0.012
	(-1.19)	(1.90)	(1.51)
Years of service		-0.018^{*}	-0.016^{+}
		(-2.05)	(-1.81)
Infantry MOS		0.094^{*}	0.095^{*}
		(2.52)	(2.31)
Accused and DC same race/eth			0.037
			(0.56)
Accused and TC same race/eth			0.075
			(1.04)
Accused and MJ same race/eth			-0.004
			(-0.06)
Observations	198	198	198

z statistics in parentheses
All z-stats corrected for heteroskedasticity
$^{+} p < 0.1,$ $^{*} p < 0.05,$ $^{**} p < 0.01,$ $^{***} p < .001$

d.   *Trial Outcomes with Charges Under the General Article*

When limiting the outcomes to only trials that featured charges under the general article of the UCMJ, the sample size decreased to 294 observations. Officers are 7.4 percentage points more likely to face conviction under this model. There are no other significant variables for trials with charges under the general article. Coefficients and z statistics for this model are detailed in Table 18.

Table 18.   Chance of Conviction for Trials with Charges Under the General Article

	(1)	(2)	(3)
Black	-0.006	-0.005	0.028
	(-0.22)	(-0.18)	(0.65)
Hispanic	-0.011	-0.012	0.028
	(-0.37)	(-0.39)	(0.58)
Other	0.033*	0.035*	0.081
	(2.11)	(2.21)	(1.59)
Accused is male	-0.035*	-0.036*	-0.034
	(-2.25)	(-2.09)	(-0.90)
Age of the accused	-0.014	-0.014	-0.014
	(-1.46)	(-1.47)	(-1.47)
Years of service	0.013	0.013	0.013
	(1.36)	(1.33)	(1.38)
Infantry MOS		0.004	0.005
		(0.17)	(0.20)
Accused is an officer		0.070	0.074+
		(1.62)	(1.66)
Black male			0.009
			(0.18)
Accused and DC same race/eth			0.006
			(0.19)
Accused and TC same race/eth			0.022
			(0.60)
Accused and MJ same race/eth			0.035
			(1.48)
Observations	294	294	294

z statistics in parentheses
All z-stats corrected for heteroskedasticity
$^+ p < 0.1$, $^* p < 0.05$, $^{**} p < 0.01$, $^{***} p < .001$

2.   Punishments

The following regression models are limited to only observations where the accused was found guilty, with a sample size of 828 observations unless otherwise stated.

a.   *Length of Confinement*

Of the 828 convictions, 704 resulted in some length of confinement. Of those 704 instances, 32 were awarded lengths of confinement in excess of 100 months. These observations skewed the model's estimations as it attempted to account for the large values of the outliers relative to the rest of the observations. To counteract these effects

and get a more precise estimation of the subset, I limited the sample to only months of confinement under 100 months. Prior to limiting the sample, the mean length of confinement was 28.27 months with a standard deviation of 67.66. Limiting to only observations below 100 months reduced the mean confinement time to 14.62 months with a standard deviation of 19.25.

This model yielded several significant coefficients. Males were likely to be awarded 7.046 more months of confinement than females. The figure was an additional 7.593 months of confinement for Hispanic males. This model also produced one of the only statistically significant coefficients for the interaction variables between the race of the accused and military justice practitioners. Where the accused and military judge were the same race/ethnicity, the model estimates 2.533 additional months of confinement compared to trials where there is not a common race/ethnicity between the two. Coefficients and z statistics for this model are detailed in Table 19.

Table 19.   Length of Confinement Given Conviction at Trial

	(1)	(2)	(3)
Black	-0.261	-0.354	1.232
	(-0.17)	(-0.22)	(0.41)
Hispanic	3.407*	3.226+	-2.118
	(1.98)	(1.84)	(-0.81)
Other	3.754	3.383	5.687
	(0.83)	(0.73)	(1.15)
Accused is male	8.999***	9.190***	7.046***
	(6.57)	(6.51)	(3.51)
Age of the accused		-0.385	-0.400
		(-1.35)	(-1.41)
Years of service		0.518	0.546
		(1.55)	(1.64)
Infantry MOS		-1.815	-1.791
		(-1.18)	(-1.16)
Accused is an officer		4.817	4.986
		(0.60)	(0.64)
Black male			0.459
			(0.15)
Hispanic male			7.593**
			(2.87)
Accused and DC Same Race/eth			0.944
			(0.55)
Accused and TC Same Race/eth			0.107
			(0.07)
Accused and MJ Same Race/eth			2.533+
			(1.66)
Observations	796	796	796

_z_ statistics in parentheses
All z-stats or standard errors corrected for heteroskedasticity
+ $p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < .001$

b.   *Fines and Forfeitures*

It was difficult to isolate instances where fines and forfeitures were free from the external effects of mandatory minimum sentencing or discretionary withholding for the sake of the accused's dependents. As detailed in the methodology section, I attempted to remove or limit amounts subject to either external factor and only capture amounts adjudged by the sentencing authority.

Marines holding an infantry MOS were estimated to be awarded a slightly less amount of fines or forfeitures compared to those who do not hold an infantry MOS.

Instances where the accused and trial counsel were the same race yielded a slightly higher estimate.

Given the difficulty in ascertaining whether the amount of fine or forfeiture awarded by the court-martial is independent of the listed externalities, I do not place a high level of confidence in the significant coefficients produced by this model. Coefficients and z statistics for this model are detailed in Table 20.

Table 20.   Fines and Forfeitures

	(1)	(2)	(3)
Black	5.915	-28.985	1297.414
	(0.03)	(-0.13)	(1.37)
Hispanic	-80.554	-110.062	-22.328
	(-0.39)	(-0.50)	(-0.05)
Other	-280.349	-327.210	-249.580
	(-1.10)	(-1.14)	(-0.87)
Accused is male	-585.458	-535.460	-54.860
	(-1.44)	(-1.31)	(-0.18)
Age of the accused	13.620	13.068	14.461
	(0.35)	(0.33)	(0.36)
Years of service	50.941	54.828	49.668
	(1.02)	(1.01)	(0.98)
Infantry MOS		-247.437*	-250.854*
		(-2.46)	(-2.47)
Accused is an officer		-623.643	-657.232
		(-0.46)	(-0.48)
Black male			-1272.929
			(-1.34)
Hispanic male			12.974
			(0.03)
Accused and DC Same Race/eth			87.551
			(0.51)
Accused and TC Same Race/eth			235.617+
			(1.67)
Accused and MJ Same Race/eth			-273.978
			(-0.98)
Observations	828	828	828

z statistics in parentheses
All z-stats corrected for heteroskedasticity
$^+ p < 0.1$, $^* p < 0.05$, $^{**} p < 0.01$, $^{***} p < .001$

c.   *Punitive Discharge*

Among those convicted at courts-martial, individuals with a racial category of "Other" were 18.2 percentage points more likely to be awarded a punitive discharge. Officers were also 22.98 percentage points more likely to face a discharge compared to enlisted members, and instances where the defense counsel and accused, and military judge and the accused were the same race both showed an 8.4 percentage point increase to the likelihood of punitive discharge.

Table 21.   Chance of Punitive Discharge

	(1)	(2)	(3)
Black	-0.064	-0.060	-0.217
	(-1.55)	(-1.51)	(-1.09)
Hispanic	-0.030	-0.028	-0.337
	(-0.78)	(-0.74)	(-1.51)
Other	0.086	0.095	0.182*
	(1.20)	(1.42)	(2.10)
Accused is male	0.097	0.134	-0.066
	(1.01)	(1.40)	(-0.51)
Age of the accused		-0.003	-0.003
		(-0.36)	(-0.36)
Years of service		-0.016	-0.015
		(-1.61)	(-1.61)
Infantry MOS		-0.038	-0.036
		(-0.97)	(-0.94)
Accused is an officer		0.218	0.229
		(1.33)	(1.44)
Black male			0.244
			(1.21)
Hispanic male			0.398+
			(1.76)
Accused and DC Same Race/eth			0.084+
			(1.87)
Accused and TC Same Race/eth			-0.032
			(-0.68)
Accused and MJ Same Race/eth			0.084*
			(2.26)
Observations	828	828	828

z statistics in parentheses
All z-stats corrected for heteroskedasticity
$^+ p < 0.1$, $^* p < 0.05$, $^{**} p < 0.01$, $^{***} p < .001$

d. *Grade Reduction*

This model shows that age has a negative correlation with chance of grade reduction, but years of service has a positive correlation. This is unexpected, as age and years of service increase together throughout the course of an individual's career. Given the similarities of the coefficients, a year increase to both age and years of service would essentially cancel out the effects of each other. Individuals holding an infantry MOS are 10.5 percentage points more likely to face a grade reduction compared to Marines who do not. No other individual characteristics showed any statistical significance in this model. Details of this regression are listed in Table 22.

Table 22.   Chance of Grade Reduction

	(1)	(2)	(3)
Black	-0.082*	-0.090**	-0.040
	(-2.35)	(-2.65)	(-0.24)
Hispanic	-0.020	-0.032	0.139
	(-0.67)	(-1.05)	(1.17)
Other	-0.074	-0.095	-0.095
	(-0.99)	(-1.25)	(-1.07)
Accused is male	-0.051	-0.026	0.043
	(-0.79)	(-0.41)	(0.35)
Age of the accused		-0.019*	-0.019*
		(-2.37)	(-2.40)
Years of service		0.020*	0.021*
		(2.40)	(2.45)
Infantry MOS		-0.104**	-0.105**
		(-2.99)	(-2.99)
Black male			-0.049
			(-0.29)
Hispanic male			-0.175
			(-1.41)
Accused and DC Same Race/eth			0.000
			(0.01)
Accused and TC Same Race/eth			-0.004
			(-0.12)
Accused and MJ Same Race/eth			0.008
			(0.28)
Observations	827	827	827

z statistics in parentheses
All z-stats corrected for heteroskedasticity
$^+ p < 0.1$, $^* p < 0.05$, $^{**} p < 0.01$, $^{***} p < .001$

3. Jury versus Judge

Lastly, I attempted to determine if the chance of conviction or severity of punishment was influenced by trials where the determination of guilt and sentencing authority was performed by a jury, relative to those trials with only a military judge. In response to the Military Justice Act of 2016, the UCMJ was modified to change the way the accused is sentenced, specifically in article 53(b). Previously, if the court-martial was comprised of a jury, that jury also served as the sentencing authority for punishments. For cases referred to courts-martial after 1 January 2019 in which the accused elects for the courts-martial to be comprised of a jury, the accused may determine whether they wish to be sentenced by the jury or the military judge alone (Findings and Sentencing, 2019). If a court-martial is comprised of a judge, the judge is the sentencing authority.

I am not able to determine the sentencing authority for trials with a jury in 2019 and 2020. For trials in 2017 and 2018, the sentencing authority is the jury if present, and the judge otherwise. In order to isolate the effects of the presence of a jury, I limited the sample to only trials taking place in 2017 and 2018 and ran the regression for chance of conviction and months of confinement awarded. I do not discuss the Jury vs. Judge model for every iteration of earlier regressions due to decreasing sample size and lack of significant results.

a. *Chance of Conviction*

The coefficient for Other was significant for judge trials, but there were only four instances of an individual with a racial category of Other who was tried in jury trial between 2017 and 2018. Males who were tried by a judge alone were less likely to face conviction than females, and officers were more likely to be convicted by a jury. No other racial/ethnic or demographic factors were significant in this model. Details are shown in Table 23.

Table 23.   Chance of Conviction, Judge Trials Versus Jury Trials, 2017–2018

	Judge Trial	Jury Trial
Black	0.033	-0.325
	(0.94)	(-0.88)
Hispanic	0.021	-0.274
	(0.70)	(-0.66)
Other	0.143**	-0.006
	(2.65)	(-0.02)
Accused is male	-0.112**	-0.051
	(-3.14)	(-0.92)
Age of the accused	0.000	-0.007
	(0.04)	(-0.40)
Black male	0.009	0.534
	(0.18)	(1.50)
Hispanic male	0.071	0.419
	(1.59)	(1.05)
Years of service	-0.004	0.004
	(-0.60)	(0.19)
Infantry MOS	0.021	0.067
	(0.64)	(1.25)
Accused is an officer	-0.068	0.205[+]
	(-0.40)	(1.92)
Accused and DC Same Race/eth	0.042	0.151
	(0.92)	(1.26)
Accused and TC Same Race/eth	0.022	-0.023
	(0.48)	(-0.34)
Accused and MJ Same Race/eth	0.001	0.066
	(0.05)	(0.76)
Observations	428	106

z statistics in parentheses
All z-stats corrected for heteroskedasticity
[+] $p < 0.1$, [*] $p < 0.05$, [**] $p < 0.01$, [***] $p < .001$

b.   *Length of Confinement*

I only analyzed one aspect of punishment given a conviction, both to compare the results to the unrestricted sample, and to also show any differences in the outcomes between a military judge and a jury. Male was a significant factor for increased length of confinement for the model with only the military judge, as was Hispanic male. These are the same two coefficients that were significant for the unrestricted model of length of confinement. The sample size decreases for the courts-martial where the jury was the sentencing authority. This compounds some of the results, for instance, only two

Hispanic females were tried in this category, making the interpretation of the Hispanic and Hispanic male coefficients dubious. Given the interactive effects of Hispanic and Hispanic male, Hispanic males were still likely to face longer confinement periods with statistical significance in this model. For jury trials, an increase in age of the accused was indicative of a decreased confinement sentence, increased years of service indicated a longer sentence, and officers were likely to receive a shorter confinement period.

Table 24.   Length of Confinement Given Conviction at Trial, Judge Versus
Jury Trials 2017–2018

	Judge Trial	Jury Trial
Black	5.998	1.815
	(1.50)	(0.37)
Hispanic	0.434	-20.166[+]
	(0.14)	(-1.80)
Other	3.183	24.666
	(0.54)	(1.00)
Accused is male	10.255[**]	0.065
	(2.94)	(0.01)
Age of the accused	-0.573	-1.952[*]
	(-1.39)	(-2.61)
Black male	-3.040	-1.935
	(-0.63)	(-0.20)
Hispanic male	7.598[+]	28.604[***]
	(1.77)	(3.75)
Years of service	0.660	2.860[**]
	(1.49)	(2.80)
Infantry MOS	0.500	-7.169
	(0.19)	(-1.52)
Accused is an officer	15.758	-31.080[*]
	(1.29)	(-2.53)
Accused and DC Same Race/eth	2.902	-1.995
	(1.14)	(-0.55)
Accused and TC Same Race/eth	-0.441	3.454
	(-0.16)	(0.49)
Accused and MJ Same Race/eth	1.412	-3.091
	(0.61)	(-0.43)
Observations	374	86

z statistics in parentheses
All z-stats corrected for heteroskedasticity
[+] $p < 0.1$, [*] $p < 0.05$, [**] $p < 0.01$, [***] $p < .001$

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VI. FINDINGS

A.   POPULATION REPRESENTATION

(1)   Courts-Martial Population

I found significant over-representation among Black Marines within the courts-martial population. Black Marines were over-represented by an average of 10.2 percentage points compared to their service representation percentage in 2017–2018. White Marines were under-represented by an average of 11 percentage points compared to their service representation percentage during that same period. No other racial/ethnic categories significantly deviated between the two populations. This suggests that within the years of analysis, Black Marines are more likely to face courts-martial and thus comprised a greater percentage of the courts-martial population than a random sample would produce. The converse is true for White Marines, with sustained under-representation and decreased chance of courts-martial.

(2)   Non-Judicial Punishment

Black Marines within the courts-martial population were also more likely to have been the subject of NJP during their career compared to the sample average. Black Marines were the subject of NJP 44.5 percent of the time, while the sample average was 31.7 percent. White Marines within the courts-martial population were the subject of NJP 29.77 percent of the time.

(3)   Military Justice Practitioners

Among the trial counsel, defense counsel, and military judge, Black Marines and Hispanic Marines represented only 7 and 6.5 percent of the population, respectively. This is based upon a weighted average of courtroom observations. This contrasts to 21.69 percent for Black Marines and 22.78 percent for Hispanic Marines among the accused. As such, within this sample Black Marines were only represented by a Black Defense Counsel on 2 out of 200 occasions, and only faced a Black Military Judge 17 times out of 200. Hispanic Marines were represented by a Hispanic Defense Counsel 11 times out of

210, and a Hispanic Judge 21 times out of 210. 32 percent of the time, a Black Marine accused at courts-martial faced a trio of all White military justice practitioners. That same figure was 29.52 percent for Hispanic Marines.

(4)   Summary

In terms of population percentages mentioned in the preceding categories, I did find evidence of systemic misrepresentation. I am not in the position to make definitive claims regarding the validity of the charges or accusations of misconduct that led to disparate rates of non-judicial punishment and courts-martial population representation for Black Marines. I similarly cannot make any attempts to explain the population representation disparities of Black and Hispanic Marines within the 4402 community, and subsequently the reality whereby Black and Hispanic Marines find themselves much less likely to experience a trial with Military Justice Practitioners that look like themselves. I do claim that these inconsistencies are evidence for some systemic mechanism that tilts the scale of equity away from Black and Hispanic Marines, in these instances.

B.   COURTS-MARTIAL

(1)   Trial Outcomes

I did not find evidence for broad differences in the outcomes of trials at courts-martial from 2017 to 2020 based on race/ethnicity. The only exception in terms of trial outcomes was for individuals with a racial category of "Other," which includes Native Hawaiians, Pacific Islanders, American Indians, and Alaskan Natives, and any ethnicity other than Hispanic. Individuals in this category saw an increased likelihood for conviction at courts-martial. It should be noted that individuals in the "Other" category only comprised 31 out of 910 observations, but 30 of those individuals were convicted, a rate higher than the sample mean. There were no other indications among the regressions featuring trial outcome as the dependent variable where race/ethnicity played a significant factor in the outcome. There was also no indication of any influence in the outcome of the trial in instances when the accused and the corresponding military justice practitioners shared the same race/ethnicity.

Various other demographic and service characteristics were significant when predicting trial outcomes. As a Marine's age increased, their likelihood of conviction at a trial involving drug charges decreased. Officers were less likely to be convicted at trials involving drug charges. An increase in years of service correspondingly decreased the likelihood of conviction at trials involving sexual misconduct charges, and Marines with an infantry MOS saw an increased likelihood of conviction at trials involving sexual misconduct charges.

(2)   Punishments

I similarly did not find evidence for broad systemic differences in punishment severity given a conviction at courts-martial. There were two notable exceptions. Hispanic males were more likely to receive greater confinement sentences, and individuals with a race/ethnic category of "Other" were more likely to face punitive discharge given a conviction at courts-martial.

Instances when the race/ethnicity of the accused and military justice practitioners were the same resulted in several significant coefficients. When the military judge and accused were the same, there was a slight increase to chance of confinement and punitive discharge. When the trial counsel and accused were the same, there was a slight increase to the amount of fines/forfeitures, and when the defense counsel and accused were the same, the chance of punitive discharge slightly increased. These findings were relatively contrary to expectation and not consistent across models. I do not place a large explanatory value on the results of the coefficients within this category.

There were several demographic and service characteristics that influenced punishment severity. Males were more likely to face longer confinement sentences, Marines with an infantry MOS were less likely to be reduced and on average faced a lesser amount of fines/forfeitures. An increase of age caused a reduction of likelihood of reduction, but this was offset by an increase of likelihood for reduction as years of service increased. Lastly, officers were more likely to be discharged following a conviction.

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VII. CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS

The primary research question I sought to answer while researching this thesis was whether the Marine Corps demonstrated equity in trial outcomes for special and general courts-martial without regard for race or ethnicity during my sample timeframe. Generally, no racial or ethnic characteristic was a strong predictor of conviction or punishment severity. The results for conviction rates and chance of discharge for individuals with a race in the "Other" category relative to the White and Asian population, and also the likelihood that Hispanic Males will face longer confinement sentences show there may be instances of inequity among subsets of the larger population. This is difficult to determine, as there were only 31 individuals out of 910 within the "Other" category, and the timeframe of this analysis was not conducive to gathering additional years of courts-martial data to increase the sample size. Additionally, there may be many underlying factors influencing the greater confinement lengths for Hispanic males including the category and severity of the misconduct they were convicted of. Confinement lengths are influenced by a number of factors, and without further analysis and additional controls, it is difficult to identify exactly why this occurred during the sample timeframe.

I did determine that there is evidence for over-representation of Black Marines within the processes that lead them to court-martial. Black Marines are court-martialed significantly more often than White Marines relative to their respective service population representations. While Black Marines made up 11.24 percent of the Marine Corps during 2017–2018, they represented 21.44 percent of the courts-martial population. White Marines saw under-representation of approximately 11 percent during that same time. This disparity also extends to the higher rates at which Black Marines who were court-martialed were the subject of NJP.

We must assess why Black Marines are court-martialed at a higher rate, and whether the processes that lead them to trial are subject to systemic bias. I reject the

notion that certain categories of Marines commit more misconduct as a function of their race/ethnicity. If indeed there is a systemic mechanism that causes more Black Marines to be referred to trial for charges that would be otherwise dealt with extra-judicially for other races, true parity in the broad context of the service population representation would in fact be a lesser conviction rate for Black Marines for those charges. Military justice practitioners are certainly afforded the benefit of the doubt, as they have no way of knowing whether charges for a given Black Marine may have been otherwise dealt with extra-judicially for a White Marine within their respective units. I am also not suggesting that cases be dismissed or acquitted to compensate for disproportionate representation statistics. All cases should be tried on their merits based upon the UCMJ, but the over-representation of Black Marines and under-representation of White Marines within the court-martial population is evidence of a lack of uniformity in the processes that lead them to trial.

Despite the nearly uniform conviction rates and lack of significant predictors of conviction or severity of punishment based on race/ethnicity, the over-representation of Black Marines at courts-martial still infers we are convicting and punishing them at a higher rate relative to the general population of Marines. The ostensible equity in trial outcomes does nothing to remedy this over-representation, nor does it absolve the responsibility to investigate why it exists. Though I do not reject my null hypothesis based upon my statistical analysis, this important piece of context makes it difficult to claim that there is a lack of systemic bias in the comprehensive military justice process.

While I determined the racial/ethnic composition of the military justice practitioners was dissimilar to the courts-martial population, this is symptomatic of a broader under-representation of minorities within the officer ranks in the Marine Corps, and is not just limited to those officers with an MOS of 4402. While I determined there were no significant impacts to trial outcomes and punishments on occasions when the race of the accused and military justice practitioners were the same, this does not diminish the question of why there is such significant under-representation of minorities not only among military justice practitioners, but also among the officer ranks and leadership positions across the Marine Corps.

B.   RECOMMENDATIONS

It would be a worthy endeavor to determine how commands with minority leadership fare in terms of disciplinary rates among minority Marines, relative to the general population. Marines seek inspiration, direction, and mentorship from their leaders. This may be more difficult if Marines find their leadership to be less heterogeneous than the communities from which they were recruited. It may also affect the way leadership interacts or doesn't interact with those under their charge. It is my opinion that the lack of representation of minorities among officers and leadership positions may possibly be a contributing factor to the adverse over-representations of Black Marines noted in this study.

Racial and ethnic codes are not uniform across the DoD. Utilizing a common method for codifying and storing this information would make large-scale analysis across the DoD possible. Many studies that I researched prior to my analysis noted that disparities in the ways different services describe racial and ethnic attributes made cross-service analysis difficult or impossible.

I recommend that a similar study to this be performed, specifically looking into the conviction rates of those with a racial category of "Other." I recommend a larger period of analysis than four years, as a greater sample size is needed to determine whether systemic bias exists within the conviction rates of this racial category. 30 of 31 individuals within this category were convicted, but had one or two been acquitted, the conviction percentage and regression coefficients would have likely been insignificant relative to the sample mean. A larger sample size would make the subset less prone to large impacts from single observations and produce a more reliable reflection of the true population.

The coefficient for greater confinement lengths for Hispanic males was notable and should be further investigated to better determine the cause. More detailed trial data and information gathered from the command investigations associated with the misconduct would shed better light on why Hispanic males are facing longer confinement

sentences given a conviction at trial, and whether this is an instance of systemic bias or due to some other factor.

The data needed to perform regression analysis was neither easily obtained nor amenable to performing diverse regressions. I recommend that the Marine Corps' case management system for courts-martial (whether CMS-LA or Wolverine) directly interface with MCTFS to capture and populate race/ethnic and demographic data on the accused and military justice practitioners consistently and accurately. This would eliminate the need to request data from two locations, clean both data sets, merge, and cross validate, all of which may lead to errors in both data entry and subsequent analysis. Utilizing the EDIPI of the accused and military justice practitioners, MCTFS can accurately retrieve and store the data for immediate analysis within the legal database. Reports of summary statistics could be run directly from the software, similar to Command Profile analysis available from the M&RA web portal. Additionally, it would be useful for the sake of analysis if the UCMJ articles under which an individual was charged and convicted were delineated into an independent data-field. Any insight to which charges were present required individual analysis of the "pleas and findings" paragraph of each observation that often did not state any final disposition or which charges led to the conviction.

APPENDIX A. MARINE COURT MARTIAL POPULATION DATA 2019–2020

Individual Characteristic	Service-Wide Not Available		Courts Martial Population	
	Number	**Percentage**	**Number**	**Percentage**
Male			225	97.82
Female			5	2.17
White			161	70.00
Black			54	23.47
AIAN[1]			1	0.43
Asian			2	0.87
NHPI[2]			6	2.61
Two or More Races			N/A	
Unknown			6	2.61
Hispanic			54	23.48
Not Hispanic			176	76.52
Total			230	

1. American Indian, Alaska Native
2. Native Hawaiian, Pacific Islander

Table 25. Active Marine Enlisted Courts-Martial Population Representation 2019

Individual Characteristic	Service-Wide Not Available		Courts Martial Population	
	Number	**Percentage**	**Number**	**Percentage**
Male			142	95.95
Female			6	4.05
White			101	68.24
Black			32	21.62
AIAN[1]			3	2.03
Asian			5	3.38
NHPI[2]			2	1.35
Two or More Races			N/A	
Unknown			5	3.38
Hispanic			34	22.97
Not Hispanic			114	77.03
Total			148	

1. American Indian, Alaska Native
2. Native Hawaiian, Pacific Islander

Table 26. Active Marine Enlisted Courts-Martial Population Representation January-August 2020

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APPENDIX B. RACE/ETHNICITY OF UNIQUE OBSERVATIONS OF MILITARY JUSTICE PRACTITIONERS WITHIN SAMPLE 2017–2020

Race/Ethnicity	Trial Counsel		Defense Counsel		Military Judge	
	Number	**Percentage**	**Number**	**Percentage**	**Number**	**Percentage**
White	135	83.33	118	80.27	27	79.41
Black	5	3.09	7	4.76	2	5.88
Asian	2	1.23	5	3.4	2	5.88
Hispanic	7	4.3	7	4.76	2	5.88
Other	8	4.94	3	2.04	0	0
Declined & not missing	5	3.09	7	4.76	1	2.94
Total	162		146		34	

Table 27.   Race/Ethnicity of Unique Observations of Military Justice Practitioners within Sample 2017–2020

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APPENDIX C. MARINE CORPS ACTIVE DUTY OFFICER POPULATION REPRESENTATION, 2018

Individual Characteristic	Service-Wide	
	Number	**Percentage**
Male	17,654	92.03
Female	1,528	7.97
White	15,428	80.82
Black	1,006	5.24
AIAN[1]	175	0.91
Asian	677	3.53
NHPI[2]	112	0.58
Two or More Races	327	1.70
Unknown	1,457	7.60
Hispanic	1,762	9.19
Not Hispanic	17,420	90.81
Total	19,182	

1. American Indian, Alaska Native
2. Native Hawaiian, Pacific Islander

Table 28.   Active Marine Officer Population Representation, 2018. Source: OUSD (2018).

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